[Mr. S. Krishna Aiyar.]

THE NAYAR REGULATION AMENDMENT BILL.

PRESIDENT: We are at sub-clause (3) of amendment to Clause 8 of the Nayar Regulation Amendment Bill.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I move that the words *'not exceeding Rs. 5,000'* be deleted from clauses (*a*). and (*b*). A limit is sought to be placed by Statute upon the discretion of judicial officers. Cases may arise when judicial officers may have to give more than Rs. 5,000. So long as we have trust and confidence in judicial officers no limit need be placed, and least of all, any statutory limit. Ordinarily, when a maximum is specified it is taken as the standard. It is not in keeping with the principles of legislation to attempt by Statute to confine judicial discretion.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I second it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I oppose the amendment. With respect to the observation of my learned friend that nothing like a limit shall be placed on judicial discretion I would just draw his attention to the various terms of imprisonment prescribed in the Indian Penal Code. Then, there are civil measures also, which, of course, cannot be cited at such short notice. I would also invite the attention of the learned mover to the existing provisions of the Nayar Regulation itself. We have got a standard fixed with respect to the question of compensation. My friend observed, during the course of his argument, that once a standard was fixed there was the possibility of that standard being accepted as a model by the judicial officers. At the same time, my friend said that, so long as we were prepared to place trust in judicial officers, no standard need be fixed. Both these observations cannot go together. If the judicial officers, according to my friend, are likely to confound the maximum fixed as the model, we are more or less in a position to imagine the sort of judicial officers that my friend keeps before his mind's eye. We have fixed the standard in consideration of the existing law and also the nature of the judicial officers that we have to deal with. As to the question whether a standard itself is necessary, we have various circumstances to be taken into consideration. In the case of a Nayar wife or husband who may be divorced there is the possibility of both of them marrying again. It may be that a wife at the age of 60 may be divorced by a husband aged 70. In such a case, certainly, some standard must be given to the judicial officer who sits in enquiry for the consideration of the divorce of such old people, as to the moderate sum that is to be given as compensation. In view of all these facts and adopting also the wisdom of the previous set of legislators, I would oppose the amendment proposed and submit that this clause may stand as it is.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Is it Mr. Narayana Pillai's opinion that judicial officers' discretion may be trusted from Rs. 1,000 to Rs. 5,000?

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Certainly; it is as a model to judicial officers that the amount has been fixed. The trust that we are obliged to place in judicial officers is a matter of pure necessity.

MR. S. KRISHNA AIYAR (*Mavelikara cum Kartikapalli*): I have nothing to answer.

The question that the words 'not exceeding Rs. 5,000' be deleted from paragraphs (*a*) and (*b*) of sub-clause (3) of Clause 8 was then put to the vote and lost.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I beg to move the following amendment:—

Add at the end of paragraph (a) the words "having regard to the position, means and circumstances of the parties."

We have these words at the end of paragraph (*b*). Paragraph (*a*) runs as follows:—

"(*a*) If the petitioner is the husband and his prayer has been granted, the court shall, except in the case of adultery or change of religion, award to the wife such compensation not exceeding Rs. 5,000 or such monthly allowance till her remarriage as would be proper under the circumstances."

There is no justification for omitting the words 'having regard to the position, means and circumstances of parties,' which occur at the end of paragraph (*b*).

MR. N. KUMARAN (*Nominated*): I second it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I accept the amendment.

The amendment was accepted by the House.

MR. P. T. THOMAS (*Kottayam*): I move an amendment to clause (*b*).

PRESIDENT: A little louder please.

MR. P. T. THOMAS (*Kottayam*): I propose the following as an amendment to paragraph (*b*). Add the following proviso:—

"*Provided that the necessary court fee has been paid on the compensation or monthly allowance claimed.*"

PRESIDENT: What is the proviso?

MR. P. T. THOMAS (*Kottayam*): The proviso that I read just now.

PRESIDENT: But you cannot be heard.

MR. P. T. THOMAS (*Kottayam*): Add the following as proviso to paragraph (*b*):—

"*Provided that the necessary court fee has been paid on such compensation or monthly allowance claimed.*"

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out that a similar amendment appearing in the old agenda is to be

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[Mr. S. Krishna Aiyar.]

moved by Mr. Subba Aiyar. Mr. Subba Aiyar's amendment is also about payment of court fees in regard to compensation. That amendment we have already adjourned for consideration after this amendment is disposed of.

PRESIDENT: That relates to Clause (8).

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Yes, Sir. That has been adjourned for consideration after this amendment is disposed of.

PRESIDENT: Will you also wait, Mr. Thomas?

MR. P. T. THOMAS (*Kottayam*): My amendment is a different one. Mr. Subba Aiyar's amendment relates to the payment of court fee on the sum decreed. My amendment relates to the payment of court fee on the sum claimed.

PRESIDENT: What is it? I do not see the difference.

MR. P. T. THOMAS (*Kottayam*): My amendment relates to the payment of court fee before a decree is passed. The other amendment relates to court fee to be paid after a decree is passed.

PRESIDENT: I do not quite follow you. Of course, there is the petition and the necessary stamp will be attached to it.

MR. P. T. THOMAS (*Kottayam*): A certain sum may be claimed by the respondent in the counter-petition.

PRESIDENT: You want court fee to be paid with regard to the statement?

MR. P. T. THOMAS (*Kottayam*): The court has to investigate the claim before a decree is passed, *i. e.*, as to how much money is due to the respondent by way of his claim. Whatever be the amount which he claims he must pay court fee.

PRESIDENT: You may move it; but please put it in unambiguous and clear language. Please repeat the proviso that you wanted to be added.

MR. P. T. THOMAS (*Kottayam*): *Provided that the necessary court fee has been paid on such compensation or monthly allowance claimed.*

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I second the proposition. As at present, in respect of suits for dissolution of marriage, a court fee of Rs. 10 is fixed. When a petition for dissolution is presented, the respondent makes a counter-claim and asks the court to adjudge with regard to that. The claim may be for one rupee, one thousand rupees or five thousand rupees. The court has to go into the question not only as to the reasons for dissolution but also as to what amount may be allowed to the respondent as compensation or monthly allowance. As the court has to consider that question it has necessarily to be vested with the jurisdiction, and ordinarily the jurisdiction

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depends upon the court fee paid. (*Hear, hear.*) If no court fee be demanded, the court will have to consider the question and the Government will not be a gainer to the extent of the court fee. The amendment of Mr. Subba Aiyar will affect the provision that court fee need be paid only on the amount of the decree.

PRESIDENT: For the purpose of execution, I think.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Court fee has to be claimed not only on the amount adjudged. In ordinary cases when a plaint or an appeal is put in, court fee is paid upon the value of the claim and it does not depend upon the result of the suit. So, what Mr. Thomas proposes is that, when the respondent puts forward a claim for a certain amount, the court shall be allowed to enter into the question only after the claim has been taxed. The question of taxation, *viz.*, payment of court fee, should not be made dependent upon the result of the claim.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): May I know from Mr. Krishna Aiyar whether court fee is levied, at present, on the amount claimed by way of improvements in a written statement?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I believe, my friend knows, it is not.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I oppose the amendment. It might be pointed out that, even as it is, under the existing Nayar Regulation, the court fee has to be paid after the determination of the compensation amount, and rightly so. It is unwise to ask—it will be putting the respondent in a very awkward situation—the respondent who may be the counter-petitioner to pay court fee on the amount that may be adjudged later on. If my friend Mr. Thomas had read correctly clauses (*a*) and (*b*) of sub-section (3), he would not have moved this amendment. The clauses read as follows: "if the petitioner is the husband and his prayer is granted," "if the petitioner is the wife and her petition is granted," then the court has to proceed to decree such compensation not exceeding Rs. 5,000 or such monthly allowance as would be proper under the circumstances. It may be that the petitioner goes in not to contest the case. She goes in only to deny the allegations in the petition and does not say anything else except at a subsequent stage when he or she is called upon to contest the claim for compensation. The amount of compensation has to be adjudged and it is only on an ascertainable sum that the parties should be asked to pay court fees at all. As a matter of fact the existing Regulation provides for that and the Select Committee considered that, and even said that it should not be allowed. It is only in case of appeal that the sum claimed or awarded should be the basis of court fees. It is on that ground that Mr. Subba Aiyar has put in his amendment. So that, to say from the very start that court fees should be paid upon an amount which you will have to fix from the very beginning is going too far in the light of the new amendments to clauses (*a*) and (*b*).

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[Mr. P. K. Narayana Pillai.]

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I oppose the amendment. So far as I had been able to gather, the proceedings begin on the petition and, as such, I do not think that in such cases regular court fees should be levied as in a regular plaint.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I also wish to oppose the motion. The existing Nayar Regulation and the Bill submitted by the Select Committee do not make any provision for payment of court fee. For the consolation of my friend Mr. Krishna Aiyar, who seems to be anxious to better the position of the Government in this respect, I may draw his attention to the analogus provision in the Indian Divorce Act and the Parsi Divorce Act, where there is absolutely no hedge furnished to fetter the discretion of the court. Further, where the wife or the husband, as the case may be, who happens to be the respondent or the petitioner, claims compensation, in the nature of the amendment now discussed, it is the duty of the court to determine the compensation. When once the necessary fee upon the petition has been paid—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask whether the court is bound to go into the question if the respondent does not claim the compensation?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Certainly.

PRESIDENT: "Shall" is the word.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The question of alimony is a matter which the court has necessarily to go into except where there is a disclaimer by the wife. Of course, we have got in the ordinary practice the analogous question of improvements. Originally, it was a perturbing element for the judiciary in practice. But now that has been set at rest by the decision of the High Court that in such cases no court fee need be paid. It is only when accounts are actually taken that the payment of court fee is contemplated under the Court Fees Act by defendants in account suits.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Are definite amounts claimed?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No; the parties suing and the parties opposing need pay court fees only after the amounts are adjudged. Such being the case, the novel procedure urged by Mr. Thomas, certainly would be a jarring element in the Bill under consideration. So I oppose the motion of my friend.

I would also try to alleviate the anxiety on the part of the Government, and also on the part of Mr. Krishna Aiyar who seems to be somewhat ardent by pointing out that the British Indian Court Fees Act provides for a consolidated payment of twenty rupees only and nothing more. If the legislature in Travancore wants to make some money out of the divorce of Nayar women, they may do so on the model of the said Act.

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I also oppose the amendment moved by Mr. Thomas. The principle of the Court Fees Regulation is that court fees have to be paid according to the relief sought for in the plaint. The question for determination is, what is the relief and what should be paid for that relief. There may be several incidental reliefs, when the court may be asked to go into one question; and on such incidental reliefs no court fee is required to be paid under the Court Fees Regulation. In a divorce proceding, what is the relief sought to be claimed? The relief sought is a declaration of dissolution of marriage. Of course, court fee will have to be paid, if that relief is not sought for. If it is sought by a petition not under this Regulation, then court fee will have to be paid. And all other questions that courts may have to go into are only incidental to the main relief. It is for that reason that in such cases the successful party is not required to pay any court fees. In the case of a redemption suit no court fee is paid on the improvements, because in a redemption suit, the other question is incidental to redemption. Then there is the case of compensation for improvements made by the party in possession during the time the decision was in force. That is incidental to the main relief, and therefore no court fee is asked to be paid. Therefore it is against law and procedure to require court fees to be paid on a petition in a divorce suit. There has been no reason urged for it.

MR. P. T. THOMAS (*Kottayam*): പിന്നെ കൊടുക്കണമായിരുന്നു—

PRESIDENT: You are talking in Malayalam. You must choose between talking in Malayalam and talking in English. If you talk in Malayalam, you must always talk in Malayalam.

MR. P. T. THOMAS (*Kottayam*): I have no objection to talk in English.

If any amount is claimed in the written statement, then fees must be paid on that. I do not say that no court fees need be paid on the adjudged amount; but my wording is that court fees must be paid on the amount claimed. Mr. Narayana Pillai was saying that the court was bound to give some power to the respondent as the court found fit. For my purpose I do not say any fee must be paid; but if any fee is paid on the amount then it must be on the written statement. Otherwise parties may be claiming exorbitant sums as compensation. It may be very difficult for the court to find out the exact sum that should be paid. The court will have to dispose of this matter as a regular suit. They say a certain fee has been paid on the application; but that is for the dissolution of marriage. For the dissolution of marriage I do not say fees should not be levied. This is separately for the amount that the respondent claims. If he does not claim anything, of course, under the proviso the applicant need not be paid anything.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): May I ask whether he is aware of the rules in regard to redemption of mortgages, and whether he is aware of the rules for payment of fees for improvements in redemption suits?

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[Mr. S. Krishna Aiyar.]

MR. P. T. THOMAS (*Kottayam*): As a lawyer, I think, Mr. Ramakrishna Pillai knows it also.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I wish to have an answer.

PRESIDENT: That question has already been put and answered.

MR. P. T. THOMAS (*Kottayam*): If the parties do not claim it, no court fee need be paid.

The amendment was put to the vote and lost.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Before we pass on, I have a verbal change to suggest. In clause (*a*), the wording is "if the petitioner is the husband and his prayer has been granted" and in clause (*b*) the wording is, "if the petitioner is the wife and her petition is granted." For the sake of uniformity, it will be better to introduce the word "*is*" instead of "has been" in clause (*a*) and "*prayer*" instead of "petition" in clause (*b*).

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have no objection to accept the amendments.

The amendments were adopted by the Council.

PRESIDENT: We now pass on to sub-clause (4).

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Before we pass on to sub-clause (4), I would request the President to consider the forum provided for the trial of matrimonial causes, *i. e.*, Clause 8. The position of the delegates indicated in the particular clause is akin to that of a jury, and since it is the idea that the verdict of the majority of the delegates empanelled would be final, the nature of the appeals to be preferred to the High Court in accordance with the finding of facts by the delegates will have to be considered. So, first of all, I request the President to be so good as to consider the nature of the tribunal before the question of appeal.

PRESIDENT: I have no objection. We will proceed with the consideration of Clause 8. I will read out the Clause.

"(8) The Government shall, in accordance with rules to be framed, appoint persons within the jurisdiction of each District Munsiff to be delegates to aid in an enquiry under this Chapter. The persons so appointed shall be Nayars, males or females, and their names shall be published in the *Government Gazette*. The delegates to aid in an enquiry shall be selected by the court in rotation from the delegates appointed for each court."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to move that sub-clause 8 be deleted.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have an amendment to Clause 8. My amendment is brought forward in order to define the functions of the delegates.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Mr. Subba Aiyar has the primary right.

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PRESIDENT: Yes.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have to move an amendment.

PRESIDENT: Yes; you may move your amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, this sub-clause contemplates that in the matter of divorce there should be a jury or assessors, by whatever name they may be called here.

PRESIDENT: "Delegates" they are called.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*):—Delegates, to assist or aid the court in the trial. Now I beg to submit that there is absolutely no necessity for such a provision in the Bill. I understand that Mr. Narayana Pillai has taken the provision from the Parsi Act. I may say that the amendment does not find a place in the Indian Divorce Act. So far as the Parsi Marriage and Divorce Act is concerned, it is an Act of 1865, passed, I need not say, many years ago; and therefore it is a very old Act. I do not say that there is anything wrong in adopting a provision from an old Act; but I say that the circumstances which led to the provision being enacted in that Act must be that the Parsis as a community are very small in number. The Act whose provision has been adopted here was intended to apply to the whole of India consisting of various Presidencies. In each Presidency there was to be only one court, the High Court, called a Parsi Matrimonial Jurisdiction Court, and it is open to the Government to constitute more courts—for instance the District Court, as Matrimonial Courts. We do not know whether such a court has ever been constituted. Thus the court that was intended to try divorce cases was a High Court or a District Court. In 1865 I do not think there was any Indian as a Judge in a District Court, or as a Chief Justice of a High Court who could sit in a Matrimonial court. He was generally a European. The Parsis were very few in number; their habits, customs and manners were not known to Europeans and probably it was thought that it would be necessary in the interests of justice to know something about them. And therefore it was evidently thought necessary to have delegates. But when we come to the Indian Divorce Act of 1869 which concerns Christians, it was evidently thought that such a provision was unnecessary. Coming to our own country, we are not as a matter of fact accustomed to this system. When in the Criminal Procedure Code an attempt was made to have the jury or assessors for trial there was very strong opposition, with the result that that provision was dropped. In matrimonial criminal cases before a Sessions Court, it is a well-known fact that when a man is charged with bigamy or adultery the court is not aided by a jury or assessors. We also know, as a matter of fact, that, in every criminal case tried by a sessions court, they have got either a jury or assessors in British India. So in the case of a limited number of trials which concern a very limited number of people like the Parsis, whose habits and manners were not known to the Judges, that provision was put in several years ago. But what is our condition here? Our Munsiffs who

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[President,]

are to exercise jurisdiction under this Bill are Brahmins, Nayars, Ezhavas and other Hindus or Christians, and every one of them knows the habits and manners of the Nayars very closely. That being the case, it is absolutely unnecessary to have a certain number of people to assist the court in deciding as to whether the evidence adduced by the respondent or petitioner is reliable or otherwise. When we have no precedent for having jurymen or assessors before our courts, I think the amendment is absolutely unnecessary. In Clause 6—I am anticipating it—the whole proceedings, it is said, should be *in camera*. I think those words '*in camera*' do not appear in the Parsi Act. That is also one of my reasons. Under these circumstances, I do not think that any proper case has been made out to co-opt delegates for the purpose of expressing an opinion. Further, the amendment, as it stands, does not say what the powers of these delegates are, whether their verdict should be binding on the court as jurymen or whether their verdict will be, as in the case of assessors, merely advisory and whether in such cases anything should be done by the court. All these matters are not covered by the amendment. In the absence of specific provision as to what exactly the powers are, and as to who should exercise these powers, and in view of the broad fact that there is no precedent so far as Travancore is concerned, and seeing that the habits, customs and manners of the Nayars are well-known to every judicial officer, I do not think it necessary to encumber the Statute by means of a provision requiring the delegates to consider the question as to whether there is a proper case for divorce or not. With these words I move that the Clause be deleted.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I have the total population of the Parsis?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That idea struck me in the morning; but I had not the *Census Report* before me. The population must be very small, certainly much less than the Nayars.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Sir, Mr. Subba Aiyar's amendment is to delete the whole Clause. My amendment is to add at the end of the Clause a sentence by which the functions of the delegates might be defined so that the Clause might be made clear and definite. I may be permitted to submit that these two amendments may be put together so that the House may be able to judge which of the amendments should be preferred.

PRESIDENT: I do not think there is a necessity for putting the two amendments together. Your amendment, Mr. Ramakrishna Pillai, is that the sub-clause is necessary. Mr. Subba Aiyar has moved that the sub-clause be deleted. I cannot put the two amendments together to the vote or allow them to be discussed together. Mr. Subba Aiyar's amendment may be discussed and voted upon. If that is carried, your amendment does not come in, and, if it is not carried, you can then move your amendment.

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I may be permitted to mention a difficulty. Mr. Subba Aiyar's amendment is to delete the whole sub-clause. My amendment is to add. If my amendment is accepted, then it will mean that the Clause should stand.

PRESIDENT: You cannot move your amendment now. But in opposing the amendment of Mr. Subba Aiyar, you may say that this is your proposal. You may say that these are the functions of the delegates, and you may press upon the House that the Clause may be so defined.

MR. N. RAMAKRISHNA PILLAI: (*Vaikam* cum *Ettumanur*): Yes, Sir; I oppose the deletion of that Clause. My suggestion is that the sub-clause might be made clear and definite by the addition of the following words at the end of it:—

"And the decision on the facts shall be the decision of the majority of the delegates before whom the trial is held, questions of law and procedure alone being determined by the presiding Munsiff."

With this addition I submit that the Clause will be clear and the functions of the delegates will be more clearly defined. If my suggestion is accepted, I submit that the Clause should be maintained in view of the fact that the enquiry will be made more easy with the aid of the delegates in such an enquiry. Mr. Subba Aiyar said that the Parsi Marriage Act did not contain a provision to conduct the trial *in camera*. It is not so. The Parsi Marriage Act does contain a provision to the effect that the trial should be held within closed doors. In view of that fact and in view of the fact that the peculiar function of the delegates is to decide questions of fact, I beg to oppose the amendment to delete the whole Clause. I may also be permitted to point out that in the Matrimonial Causes Act of 1852 passed by the British Parliament—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I ask Mr. Ramakrishna Pillai whether, in all civil trials in original cases, the court is not generally assisted by a jury in England?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Ordinarily the court is assisted by a jury. Nevertheless it was deemed necessary to insert a special provision in the Matrimonial Causes Act to the effect that the decision of the jurors with respect to questions of fact in divorce proceedings should be binding on the judge. I submit that this provision is exactly the same as in the Parsi Marriage Act. The Malabar Marriage Commission in their enquiry have made certain observations with regard to the necessity for a similar provision. They observe:—

"There is however one matter which deserves special notice. It would be a great improvement if issues of fact relating to conjugal frailty were referred for trial to a local jury or Panchayat and the necessity for scandalous and demoralising revelation in public courts of justice thereby averted. . . . . I would introduce a provision in the proposed Act making it competent to the District Munsiff to refer issues of fact in matrimonial suits to a caste-Panchayat to be constituted on the application of either party to the suit or by the court itself of its own motion and rendering

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[Mr. P. K. Narayana Pillai.]

its verdict final subject to the provisions of the Code of Civil Procedure relative to trials before arbitrators. The revival of such tribunal for the trial of matrimonial suits has been suggested by a considerable number of educated Malayalis. It is however feared that the caste-Panchayat may not work well and may be found wanting in judicial impartiality. But I am not without a firm belief that if it is carefully constituted and encouraged it will be accepted by the people with all its imperfections as a very appropriate subsidiary tribunal for the investigation of delicate questions of conjugal infidelity."

Thus we see that that question was also before the Malabar Marriage Commission and they considered that such a course would be acceptable to the community. In the present provision also the attempt is to aid the court in such matters especially with reference to the decision of facts. My suggestion is that, if the Clause is made clear and the decision of facts is left to the delegates proposed to be constituted by the Clause, the proposal will be acceptable to the people and the decision in the trial of divorce cases will be more satisfactory. Therefore I beg to move the amendment.

PRESIDENT: You mean you oppose the amendment?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): In opposing the amendment, I offer my suggestion and move my amendment also.

PRESIDENT: That will come later on. You will have to move it after this amendment is disposed of.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I also oppose the amendment proposed by Mr. Subba Aiyar. In addition to the reasons given by Mr. Ramakrishna Pillai, with a wealth of learning and wisdom, I would point out that there are additional reasons also. My learned friend referred to the Indian Divorce Act, and there he pointed out, that no such provision like the one existing in the Parsi Marriage and Divorce Act exists. He commented upon the old age of the Parsi Marriage and Divorce Act. But the difference in age between the Indian Divorce Act and Parsi Marriage Act is after all only a period of four years. On that ground very little can be pressed seriously. The one was passed in 1865 and the other in 1869. That is all the difference. Further, at various stages, by a number of amending regulations, the last of which, as noted in the book I have got before me, is one of 1920, that Act has been dealt with and kept up-to-date. The alterations introduced left the question of "delegated" untouched. If the Parsis thought that it was impossible for them to dispense with the aid of delegates in the trial of their matrimonial cases, I fail to see what turns upon the old age of the Act as was emphasised by my friend. Let us also take into consideration yet another fact. The Indian Divorce Act, as well as the Parsi Marriage and Divorce Act, invest the District Courts or the High Courts with jurisdiction for the entertainment and trial of matrimonial cases. Nevertheless, the House in accepting the amendment proposed by Mr. Govinda Menon declared that, for the purpose of the trial

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of Nayar matrimonial cases, the District Munsiff would be empowered to hear them. Undoubtedly, there is a gulf of difference between a District Munsiff and a District Judge. Starting as we do at the lowest rung of the judiciary, I am clearly of opinion that some extraneous assistance is absolutely necessary. In view of the amendment already carried we have to start with the District Munsiff. His knowledge may be very great. But if I am allowed to speak extra-officially, that is to say, through knowledge gleaned outside official records, I may bring to the notice of the House strange intruisions of ignorance through the mass of learning of judicial officers, as where a Munsiff confounded "*tadis*" of land as having something to do with logs of timber! So in spite of the close knowledge, which my friend Mr. Subba Aiyar is prepared to credit the District Munsiffs with, through the whole of Travancore, of the customs, manners and the inner working of a Nayar household, I would submit that I am not prepared to place undeviating trust in them. Sir, I have personal experience of District Munsiffs who, in deciding suits relating to marumakkathayam families, simply ask whether the Karanavan has joined in the document as if that would settle everything. Judges who are not acquainted with the peculiar ways, shifts and devices of the Karanavan are easily bamboozled and a reference to law reports will hardly suffice to solve the questions. Thus the tarwads may be seen running the risk. Such being the case, I first of all challenge the statement of my friend when he says that every Munsiff possesses a pretty close knowledge of all the situations of a marumakkathayam family. I challenge it seriously and therefore it is that I want extraneous assistance to be afforded to these people. Further, Sir, we are entering upon an experimental stage. My friends Mr. K. Parameswaran Pillai and Mr. T. K. Velu Pillai doubt whether Mr. Govinda Menon's amendment has got the support of the community behind it. I also share the doubt whether his amendment has got the support of the community, but I would bow to the decision that has been made by the House. I do not know whether my community would accept the law as it is passed by the members of the House. So, I am pacifying the sentiments of my community in this respect. I thought of a parallel instance as prevailing in a very enlightened community like the Parsi community which thinks that such a hedging is necessary in the interests of their females. It is with all these views that I put forward the measure with respect to the association of the members of the community to assist in or to go into the proposed dissolution of marriages.

Then, with respect to the side question raised by my friend Mr. Ramakrishna Pillai whether an addition is not necessary to clearly define the function of the delegates, I am perfectly at one with him in thinking that it is absolutely necessary. In fact, it was by a regrettable oversight that I did not reproduce it at the time when I submitted my amendment. It was too late in the night and in groping through the Statute books I somehow or other chanced to omit it. Therefore, I am very glad to accept the amendment that has been moved by Mr. Ramakrishna Pillai and very sorry that I have to disagree with my learned friend Mr. Subba Aiyar.

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[Mr. T. K. Velu Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): The wisdom of Munsiffs and Judges has been commented upon rather elaborately. Mr. Subba Aiyar remarked that Munsiffs were very learned and Mr. P. K. Narayana Pillai—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I said that they were acquainted with the habits and manners of the people of Travancore.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Learned in the usages and manners. I suppose that is perfectly correct. (*Laughter.*) Mr. P. K. Narayana Pillai would say that the District Munsiff knows nothing about it. District Judges may not always be better. I may also speak about my experience of the capacity of judicial officers. One Munsiff, when he was in North Travancore, gave a decision to a party in which he applied the Hindu Law to a case between Syrian Christians. (*Laughter.*) I argued that case in the High Court and both the learned Judges had a hearty laugh at the Munsiff's expense. But the decree was not modified. (*Laughter.*) Some years afterwards I found a Judge of the High Court himself falling into a similar error (*laughter*) by quoting the law of one community to decide a case between the members of another community. When the High Court itself commit these mistakes—

MR. A. HOOGEWERF (*Nominated*): May I know the history of that case?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I think that question would be best honoured by silence (*laughter*) because I do not think the question will elicit any fact useful to the discussion.

The proposed board stands on a different footing. If you trace the history of the jury system, Sir, it will be found that it arose from a system of combination where the men of the locality were got together and they were able to give some information to the officers deciding the case about certain things taking place. It was a conclave of neighbours who knew personally about the facts of the case. The principle now adopted is similar. The members of the Nayar community are likely to know more about the actual life of the Nayars, the conditions of the marriage and ordinarily the conditions of life in Nayar tarwads also. I may also refer to a very sad experience I had with one of the District Judges, when I was arguing a case some ten years ago. I had reason to say that on the day when a gift deed was executed certain Brahmins were sent for and *dakshinas* were given. On that ground the learned Judge disbelieved the gift. That is ignorance of a colossal kind. If there is the board as contemplated in this amendment, the judicial officers will not fall into errors of this kind. Moreover, the members of the same community sit along with the judicial officer in deciding or helping the disposal of these cases. It is possible that many secrets may be

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divulged to the court and this is also a fact which we have to take into consideration. My learned friend Mr. Subba Aiyar said that the Parsis were few in number. I think that fact is not necessary for the discussion, and Mr. Subba Aiyar could certainly have given us the number of Parsis in India. That information is not forthcoming. I attach importance to the fact that even the Parsis,—a very civilised and a very rich! and influential community in India —even they want such a provision. Therefore this has been advisedly put in with the express intention of preventing grave dangers to the society—dangers proceeding from the ignorance of judicial officers.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I regret, Sir, I cannot see eye to eye with my friend Mr. Narayana Pillai or my friend Mr. Velu Pillai. There is no use of impeaching in this hall the capacity of judicial officers just to help them to put forward an argument that they have got.

PRESIDENT: You cannot say that their capacity is impeached. But their knowledge is impeached.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes; their capacity to do their duty is impeached. Only in that particular sense I meant it. I do not think any of my friends doubt the integrity of any of the judicial officers in Travancore. I said that there was an attempt to impeach the capacity of the judiciary in Travancore as justifying the introduction of a panel of jurymen or assessors to determine the cases that are likely to crop up in matrimonial alliances.

PRESIDENT: It is not their capacity; but it is their ignorance of customs and manners that has been impeached.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether they may not be given more information than that which they already possess?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That without the help of these assessors the Judges would not be able to do justice to one of the parties is the assumption with which they have started. My friends were developing their case in this way, *i.e.*, the habits and customs of the Nayar community are thoroughly known to every member of that particular community.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Not necessarily.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Then what is the meaning of your confining the membership to the members of one particular community?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): They are sure to know it. But others may know or may not.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If you take modern civilised society into consideration as it is obtaining in India, a Mahomedan Judge is called upon to adjudicate on a question involving an intricate case of Hindu law. A Hindu Judge

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[Rao Bahadur K. A. Krishna Aiyangar.]

is called upon to adjudicate a very complicated question of succession and administration of trust appertaining to the Mahomedan community. The number of matrimonial cases that the courts in Travancore will be called upon to decide will be very small compared to the number of suits in which the interests of Nayar tarwads are being involved and which are being tried from day to day in our courts. No doubt the bulk of the suits that are filed in the courts relate to the disagreement and misunderstanding among the members of the Nayar community. All these questions are now being tried by a Judge. If the Judge is ignorant of law, that would not be a serious disqualification to proceed with the trial, because, to say that a Judge does not know law is not defamatory, but to say that a vakil does not know law is really defamatory. The Judge comes there with an open mind. There are the members of the Bar to place before him the different aspects of the question involved. After all, what are the complexities involved in the disposal of matrimonial cases? There is the delicate question of adultery. Now, in a more serious manner, that question has to be tackled by the Sessions Judge. As my friend pointed out, there is the question of cruelty, incurable disease, insanity, etc. Now these are the simple questions that a Munsiff may perfectly try, and if the decision of the Munsiff is incorrect in the judgment of one of the parties, the law provides for a regular appeal. According to the position that is put forward by my friends, we introduce a new species of tribunals in Travancore for the first time under which all questions of facts shall be conclusively decided by the verdict of the jury or the assessors or delegates as the case may be. Is the country prepared to accept the decision with reference to the guilt or otherwise of the accused party come to by the jury? Where the consequences are much more serious than the questions of real guilt of the man and the compensation to be decreed—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether Mr. Krishna Aiyangar is aware that there is now an attempt in the Village Panchayat Bill to introduce local bodies as judicial officers?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is a perfectly sound position. They propose to introduce in addition to the existing judicial officers a body of people who are to do work as Judges. That is fundamentally different. If my friends say that all matrimonial cases should be investigated not by one judicial officer but by a number of judicial officers—a division bench—or that two Munsiffs should try matrimonial cases—that is a perfectly intelligent proposition. To say that five people who are judicial officers should investigate matrimonial cases is reasonable. But it is an anamolous position that they want this Council to commit itself to. There is a judicial officer holding the balance even between the parties. He is supposed to do it and he will be making an honest attempt in that direction. If due to ignorance or incapacity he should go wrong there is the Bar to keep him in position, and if in spite of the help from

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enlightened and intelligent vakils he still goes wrong, there is the appellate tribunal to rectify the wrong. My objection to the introduction of that provision is based on a very important principle. When once the legislature recognises the desirability of introducing a system of trial by jury in a very small number of cases there is no knowing where we shall be landed. You require the members of the particular community to determine that question in a case where larger interests are at stake and where communalism is likely to deflect the course. A Mahomedan might say: "Well Sir, I want my case to be tried by a Mahomedan Judge," and a Hindu may come forward and tell us that his case should be posted before a Hindu Judge. It is a question of Hindu Law which a Mahomedan is certainly not competent or able to decide.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Women may not be willing to give details of certain things to men. On the other hand there will be no objection to them to make a statement to women. So the amendment provides for the appointment of a few women also. For that reason, is not Mr. Krishna Aiyangar prepared to accept the amendment?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I think the Trivandrum Women's College is turning out a lot of lady graduates. It will be good if our graduate sisters appear in courts of law and argue the cases of ladies, not merely of the Nayar community but of ladies generally. (*Hear, hear.*) But at present they may be labouring under certain difficulties. The day will not be very far off when they shall be sitting in courts of law arguing in our midst and utilising all the resources at their disposal for winning their clients' case. Their presence may go a very long way to tone down the gloomy atmosphere of a court of law. I should welcome that day if we must solve that difficulty.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know what Mr. Krishna Aiyangar's alternative proposal is?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Just the solution which the other communities who are inhabiting this country have to accept as the final solution. It is undesirable, Sir, as a matter of principle—I am sure that my Nayar friends are not going to misunderstand me—to enact that Section leading to the implication that they have not got faith in the independence and impartiality of the judiciary. The consequences can never be so serious as to justify a statutory recognition of the proposition that one community has not got faith in the capacity, in the integrity and the impartiality of the judicial officers. When once that impression takes root, as a sincere lover of the land, I should say that will be the worst day in the history of Travancore.

MR. A. HOOGEWERF (*Nominated*): May I know whether Mr. Krishna Aiyangar has got any objection to the members of other communities constituting the jury?

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[Rao Bahadur K. A. Krishna Aiyangar.]

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I object to the introduction of a trial by jury whatever may be the composition of the jury. It is only by an accident that my friend has put in that provision. I perfectly follow his position. I do not charge him with any bias against the representatives of other communities. But there would be the implication. It was his misfortune to go to the Parsi Divorce Act and naturally to substitute the word 'Nayars' in the place of the word 'Parsis.' That was all. But what are the implications to which we are led? We have judicial officers functioning all over the land. Sir, it is true that we hear a lot in the Legislative Council and in the Sri Mulam Popular Assembly and in the columns of our vernacular papers about the principle of communal representation. But it is a matter for congratulation that we have not yet heard in Travancore that a Nayar Judge would not do justice to a Brâhmin or that a Brahmin Judge is incapable of dealing justice to the representatives of other communities.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): It was not said that the members of other communities would not have integrity of purpose. What I said was that these Judges would receive considerable assistance from the members of the community when they were impanelled as a jury. That is what I stated.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes. The question is not what my friend put in express language but what the implication underlying it has been. That is the light in which I want this amendment to be considered by my friend. Personally I am not a believer in juries settling complicated questions of fact at all in the present state of the country. Perhaps I may be regarded as a reactionary. My friends are at liberty to differ from me. But it is a matter of conviction with me that, in the present stage of society, the country is not advanced for the introduction of trial by jury. Of course, it would have been more satisfactory if the trial in the first instance arose in the District Court. The remedy will be to allow a second appeal even on a question of fact. In that way lies the solution of the difficulties that are apprehended by my friend. I myself do not believe that the dire consequence apprehended by my friend will ensue as a result of not making the provision that has now been placed before the House. I do not want this Council to commit itself to such a doubtful proposition; for I think that it may seriously prejudice if not jeopardise the administration of justice when we once recognise the necessity of introducing communal juries.

With reference to the observations of Mr. Ramakrishna Pilai, he read out certain portions from the report of the Malabar Nayar Commission. I am at one with the suggestion in that report that in those cases a jury probably comprised of members of that community will be able to dispose of such cases more satisfactorily than a single Judge. The Civil Procedure Code does not stand in the way of the petitioner or the counter-petitioner asking the court to refer the case to a Panchayat

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consisting of five individuals named by the petitioners themselves. The Civil Procedure Code provides for references by arbitration at the instance of the parties concerned. For the moment we will ignore the fact of other communities having marital relations with Nayars. For the present we will just assume that the petitioner is a Nayar or the respondent is a Nayar. In such a case, do my friends believe that their interests will be best served by a communal Panchayat? The party has only to ask the court to refer it to a body of intelligent, respectable and enlightened men undertaking to abide by the award. The law does not prevent them from doing so. I say it is a perfectly open remedy. In that way we can avoid communal misunderstandings. The appointment of a number of arbitrators at the specific request of the parties is the proper remedy.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I have a rough number or percentage of the cases that have been decided by a reference to arbitration, in my friend's experience?

RAO BAHADUR K.A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Unfortunately it is very small in number. My experience is that in the majority of cases people seem to have a greater confidence in the ultimate decision of the judiciary than in the decision of the arbitrators that they select. Is that the fault of the legislature? The Civil Procedure Code has provided a panel for the disposal of questions of this particular type. In connection with this, there was an observation that such cases need not be tried in public. I believe, in the larger interests, that dirty linen should not be allowed to be washed in public. I am not a believer in the theory of a deterrent effect by the exposing of the depravity and the defects of human nature. I have all along been against the publication of these divorce court proceedings in the newspapers of the country. That has nothing to do with the introduction of this trial by a body of delegates to be appointed by the court. Sir, at this stage, I do not go into the question of the composition of the delegates, and I am just saying that, even if it was to consist of the Brahmin, the Nambudiri and the Koil Tampuran and all the rest of it, I would object to it. In fact, the moral effect of the introduction of that board would be the same and any amount of reference to the Parsi Divorce Act and its provisions will not be a justification for the introduction of the same in Travancore. For these reasons, I support the amendment.

MR. A. HOOGEWERF (*Nominated*): The provision, as it stands, seems to be harmless. But if Parsis can have members of their own community to help them in deciding matrimonial cases for divorce and other things, I do not exactly see the opposition to the Nayars also having a similar system.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): A little louder please.

MR. A. HOOGEWERF (*Nominated*): Now, the whole finding in the matter seems to be the implication in the speeches made by the mover of the amendment and those who supported him, that Magistrates

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[Mr. Joseph Panjikaran.]

and Munsiffs are incompetent to try such cases. Mr. Velu Pillai brought forward examples of a Munsiff who belonged to South Travancore not being able to understand the language in North Travancore.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): No, I did not say that.

PRESIDENT: Mr. Narayana Pillai said that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I said that.

MR. A. HOOGEWERF (*Nominated*): Yes; I beg your pardon. He said that the Munsiff could not understand the lingo. Now, I think, that is a very far-fetched specimen. Everybody in South Travancore understands Malayalam as well as any man in North Travancore. He might have his own way of talking it. Some syllables may be longer than those used in North Travancore and some may be shorter. But they learnt their Malayalam in the classes and I think it is asking us too much to believe that a Vellala Munsiff or a Brahmin Munsiff does not understand the ways and customs of the Nayar community in North Travancore. That, I think, is too big a pill to swallow. Such an implication in the speeches has given rise to the protest made by Mr. Krishna Aiyangar. There is the Regulation. There are independent vakils on both sides to explain everything. These were his arguments. But I am in agreement with the provision that ladies and gentlemen may be required to help in the disposal of such cases.

MR. JOSEPH PANJIKARAN (*Shertallai*): I oppose the amendment proposed by Mr. Subba Aiyar. I have been listening to the arguments advanced by Mr. Subba Aiyar and then by Mr. Krishna Aiyangar. The arguments of my friend Mr. Subba Aiyar have been answered by my friend Mr. Narayana Pillai.

PRESIDENT: A little louder please.

MR. JOSEPH PANJIKARAN (*Shertallai*): So far as my friend Mr. Krishna Aiyangar's argument is concerned, the most important point that he urged for the attention of the House, so far as I have been able to understand, is that, if jurymen were required to help in such cases, it would be opening upon this country the flood-gates of jury system trials. In British India we have the jury system trial. In England we have trial by jury, and why not an experiment of this kind in a particular affair be tried here also? I am also of opinion that this is not a matter to be decided from a technical and academic point of view. It is a matter of sentiment. The Nayar community, in trying to adopt a divorce law, does not want that their inner life and the secrets of the bed chamber should be exposed to persons who do not belong to their community. I think that they are justified in that view. It is a matter to be viewed more from the sentimental stand point than from the academical and legal stand point and as such the objection of Mr. Subba Aiyar must fall to the ground.

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, when I moved my amendment I thought I did make it perfectly clear that I did not oppose the amendment on the ground that the Parsi Act is old. I did not distinctly say that it was an old Act and on that ground the provision therein should not be ignored. But what I stated was that the Parsis are very few in number. My friend asked me what the population was. It must be below a lakh, much smaller than the Nayars. That is all that I can say in the matter. In those days it was evidently thought that their customs and manners could not be understood by Europeans and it was, therefore, that such a procedure was put in. My friend suggested that it might have been deleted by the Amending Act. Once you give a privilege or a power or whatever it might be, it is rather difficult to ignore it. Further, I had distinctly stated that in the 1869 Act which relates to the divorce of Christians there was absolutely no necessity for the empanelling of the jury, and although Mr. Hoogewerf supported, he must know that, in the case of divorce proceedings among Chirstians, there are no Chirstian jurymen to assist the Judge or the High Court as the case may be.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know from Mr. Subba Aiyar how many divorce proceedings have taken place between Christians for the last five years?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am aware of one case and that case was not tried by a jury. (*Laughter.*) Will my friend Mr. Narayana Pillai tell me how many proceedings there were among Nayars on that ground?

PRESIDENT: You cannot put him a question.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg your pardon. But, all the same, it was only a case which came up before a court very many years ago and that divorce case was not decided by jurymen. All the same—

MR. A. HOOGEWERF (*Nominated*): May I know whether Mr. Subba Aiyar is aware of the fact that among Catholics there is no divorce at all?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think that Christians consist of Catholics and other denominations also, so that my remarks should not be understood to mean only with reference to Catholics.

So that, it was on that ground that in 1869 that another Divorce Act was passed. It was understood that there was no necessity for a jury. That being the case, I thought that, so far as Travancore is concerned, there was no necessity particularly for—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I inform Mr. Subba Aiyar that the number of Parsis is more than a million—nearly two millions?

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[President.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not exactly know the number. But I say that, compared with the total population, it seems to me very small. My point was that when we granted that the case was triable by a Munsiff, it presupposesd that there were not very many complications in the matter. Secondly, the question as to the appreciation of evidence need not necessarily come before a jury, because, as I said, in much more important cases there is no such jury to assist and I am also supported by another circumstance, *viz.*, that, in the Criminal Procedure Code, when trial by jury was sought to be introduced, there was such a loud protest that the Government had to withdraw the whole Clause.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How many years ago, please?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Ten or eleven years ago.

So, taking all these circumstances into consideration, seeing that for a more important thing there is no such provision, and taking also into consideration the other circumstance, *viz.*, that, however much Mr. Narayana Pillai may protest that South Travancoreans do not know the customs and manners of North Travancoreans, the habits are so unfamiliar to the persons living in Travancore or the officers constituting the judiciary, I do not believe that there will be any miscarriage of justice, especially when we provide for an appeal. I do not think that such a provision as is contained in sub-clause (8) is necessary. I have got nothing else to add and I believe that to put the sub-clause in this Regulation will be not in strict conformity with acceptable principles.

MR. A. HOOGEWERF (*Nominated*): Is trial by jury right or wrong?

PRESIDENT: Abstract questions are not allowed.

Mr. Subba Aiyar, do you press this amendment to the vote of the House?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes.

PRESIDENT: I will now put Mr. Subba Aiyar's amendment to the vote of the House that sub-clause 8 of Clause 8 be deleted.

The amendment was put to the vote and lost.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): My amendment is to add the following at the end of the Clause—

RAO BHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Have we got the liberty of moving amendments to the main clause instead of the proviso?

PRESIDENT: Yes.

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Add at the end of the clause the following :—

"*and the decision on the facts shall be the decision of the majority*—"

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I ask Mr. Ramakrishna Pillai to tell us whether the facts that he contemplates these delegates to settle relate to the grounds on which the divorce is sought for and also to the question of compensation?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Everything, including divorce, compensation and allowance.

PRESIDENT: All questions of fact.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): "—*The majority of the delegates before whom the trial is held, questions of law and procedure alone being determined by the presiding Munsiff.*"

I have submitted my explanation with regard to the clause in opposing the amendment put forward by Mr. Subba Aiyar and I have very little to add to the proposal now made before the House. My object is to make definite provision with regard to the functions of the delegates in aiding the enquiry. The question whether delegates should be appointed or not to enquire into the facts of the case was the subject of controversy with reference to the discussion on the previous amendment and a serious and unexpected view was taken of the provision now contained in this Clause. As Mr. P. K. Narayana Pillai pointed out, the object of the Clause itself is to make the divorce law acceptable to the community. And as Mr. Panjkaran said, it is a mere matter of sentiment. There is absolutely nothing underlying the provision to suggest that the decision of the District Munsiff or of the Judges of the land is not acceptable to the people concerned. It is not because the community does not rely upon the soundness of the decision of the District Judge or of the District Munsiff, but it is simply because there is a sentiment prevalent that the divorce law itself is rather too much for the community and it is to mitigate the rigours of that law that this clause, *viz.*, that questions of fact should be left entirely to the decision of the delegates to be chosen from the community, is introduced. It is on this ground alone that I think the Clause might be allowed to find a place in the Section. For these reasons I submit that the Clause with the amendment may be accepted by the House.

PRESIDENT: Do you propose this addition to the clause?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Yes.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I accept it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have got a word to say on that matter. Of course the retention of the provision has been accepted. But the proposed amendment of Mr. Ramakrishna Pillai wants that the delegates should also determine the

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[President.]

amount of compensation. That I think is rather not within the province of the jury anywhere. They come to an opinion as to wether the marriage shall be dissolved or not. The amount of compensation is always a matter to be decided by the court and not by the jury. I put it in as a mere matter of suggestion to my friend whether he will not find it possible to withdraw that portion of it and merely state that the function of the jury will be to decide upon the grounds for dissolution and not upon the amount of compensation.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether Mr. Subba Aiyar is prepared to propose it formally?

MR V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, for I do not want it to be said again that it is a matter of sentiment of the community. It was therefore that I suggested it to Mr. Ramakrishna Pillai.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I accept that proposal.

PRESIDENT: Then you will have to correct the wording of your amendment and see if the House accepts it.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): The amendment will read as follows:—

"and the decision on the facts in respect of the grounds for dissolution shall be the decision of the majority.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know what according to him must be the function of the Munsiff?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): To apply the law.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Is he to sum up?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes.

PRESIDENT: The amendment reads like this:

Add at the end of the clause the words "and the decision on the facts in respect of the grounds for dissolution shall be the decision of the majority of the delegates before whom the trial is held"—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether Mr. Ramakrishna Pillai agrees to the insertion of the words "the final decision?"

PRESIDENT: The decision is appealable.

Further the amendment runs thus:—

"questions of law and procedure alone being determined by the presiding Munsiff".

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MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): There is another amendment to be made in this—"questions of law and procedure alone as regards the grounds for dissolution."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would suggest to my friend that, once we accept the amendment, consequential amendments are necessary, *viz.*, as to what exactly should be the procedure to be followed by the Munsiff. For, he has to follow the provisions of the Civil Procedure Code which does not contemplate any jury. Also we have to know what the functions of the Munsiff and the jury should be. So that it will be safer to add a provision: "provided that it will be competent to the Government to frame the necessary procedure to be followed in such cases and the functions of the judge and jury in the matter." If such a thing is done the necessary details may be left to the Government.

MR. C. SANKARA MENON (*Quilon*): I want to move an amendment with regard to the procedure to be observed.

PRESIDENT: You may make a suggestion. We are not moving formal amendments now as such.

MR. C. SANKARA MENON (*Quilon*): Instead of the words "Government appointing persons—" insert the words—

"And the Government shall frame rules for the appointment of persons within the jurisdiction of the judge as delegates to try the enquiries and to define their functions and the procedure to be observed at such enquiries and trials."

PRESIDENT: That is a different thing. The existing amendment is that Government should frame rules for the appointment of delegates, to define their functions and the procedure to be observed at such enquiries and trials. Are you going to leave the rules to be framed by the Government? You must define their functions in the Statute.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Their functions have now been defined by the amendment.

PRESIDENT: Mr. Sankara Menon wants a change which cannot be made.

MR. C. SANKARA MENON (*Quilon*): With regard to the procedure, the Civil Procedure Code does not provide for trials with assessors.

PRESIDENT: A sentence will have to be added at the end.

MR. C. SANKARA MENON (*Quilon*): Instead of that I thought that the sentence might be altered, which would be better.

PRESIDENT: How will you alter it? Will you kindly state your idea?

MR. C. SANKARA MENON (*Quilon*): The Government shall frame the rules for the appointment of persons within the jurisdiction of the Judge or the District Munsiff making the enquiries under this Chapter and also to define their functions and the procedure to be observed at such enquiries or trials.

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[Rao Bahadur K. A. Krishna Aiyangar.]

PRESIDENT: There is an earlier suggestion of Mr. Subba Aiyar that a sentence may be added at the end. Mr. Sankara Menon's suggestion is about the beginning of the Clause.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We may say: "The Government may also frame rules with reference to the procedure to be followed by the court and empanelling the delegates"—

PRESIDENT: I think that we may go on with other amendments and then we may dispose of all those amendments and finally the wording of the Clause as a whole may be examined and a suitable wording adopted.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I beg to submit for the consideration of my friend the mover the undesirability of confining the delegates to Nayars. Probably here again my friend has simply copied the provisions of the Parsi Divorce Act. As a matter of fact, between Nayars and non-Nayars, there may not be the very same justification as in cases where the petitioner, respondent, co-respondent and the other members happen to be of a particular community. Would it not be more satisfactory to leave it to the discretion of the Government to select these delegates instead of making a statutory order restricting it to Nayars? If my friends think that that word should be retained, I would suggest for the consideration of the House the desirability of confining that panchayat to cases where the petitioner, respondent and co-respondent are Nayars. One can think of cases in which the respondent, co-respondent and petitioner are members of that community. As the law stands at present, it is a question for consideration whether it is desirable to insist on the retention of the word "Nayars" and whether it would not be more satisfactory to leave it to the discretion of the Government to select those who are to act as delegates.

PRESIDENT: What is the definite amendment that you would propose?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*):

Omit the words '*the persons so appointed shall be Nayars*'.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I rise to a point of order. I believe that the House has now accepted the amendment of Mr. Narayana Pillai to the effect that "the Government shall, in accordance with rules to be framed, appoint the persons within the jurisdiction of each District Munsiff to be delegates to aid in an enquiry, under this Chapter. The persons so appointed shall be Nayars, males or females, and their names shall be published in the *Government Gazette*. The delegates to aid in an enquiry shall be selected by the court in rotation from the delegates appointed for each court."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): No; that has not been placed before the House at all. Mr. Subba Aiyar's amendment to delete it was thrown out. If I am required

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to bring a definite amendment, it will be: 'The Government shall, in accordance with rules to be framed, appoint persons within the jurisdiction of each District Munsiff, to be delegates, to aid in an enquiry under this Chapter. *Their names shall be published in the Government Gazette.* The delegates to aid in an enquiry shall be selected by the Court in rotation from the delegates appointed for each court.'

PRESIDENT: May I suggest that it be put in another way—'The persons so appointed shall be only Nayars in case where the petitioner, respondent, and co-respondent are Nayars?'

I would say; "*the names of persons appointed,* whether males or females, shall be published in the *Government Gazette.*' That is the section. You need not interfere with it. If the amendment relates to the second sentence, then it will be the duty of the Government to put on the list only Nayars in case where all the parties are not Nayars.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): "*The delegates so appointed shall be Nayars in case where all the parties to the enquiry are Nayars.*" That is my amendment.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I wish to know whether non-Nayar ladies will be willing to sit in open court.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Instead of asking me to give a definite answer, I leave the whole thing to the Government. I am not putting forward any proposition. I cannot answer on behalf of a large community. But we shall have them if it is possible to secure the co-operation of ladies. In view of the expression of opinion that I had already given, I would confine these delegates to the Nayar community when all the parties to the enquiry are Nayars.

PRESIDENT: What are the words that you add?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): "Where all the parties to the enquiry are Nayars, the persons so appointed as delegates shall be Nayars." These are the words to be added at the beginning of the second sentence of sub-clause (8).

There is another small error. My attention has been drawn to it. The first sentence deals with the appointment of delegates by the Government. The final selection is left to the court. Probably it is there that necessity will be felt for exclusion. So the clause runs thus:—

"The Government shall, in accordance with rules to be framed appoint persons within the jurisdiction of each District Munsiff, to be delegates to aid in an enquiry under this Chapter. Where all the parties to the enquiry are Nayars the persons so appointed as delegates shall be Nayars and their names shall be published in the *Government Gazette.* The delegates to aid in an enquiry shall be selected by the court in rotation from the delegates appointed for each court *and in case where all the parties are Nayars the delegates shall all be Nayars.*"

MR. C. SANKARA MENON (*Quilon*): I wish to know what exactly is his implication in this amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The implication is that this enquiry will not be restricted to Nayars where other parties come in.

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[Mr. A. Hoogewerf.]

MR. C. SANKARA MENON (*Quilon*): Is that the only one?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): So far as I am concerned that is the only implication. I am keeping nothing on the back of my mind. It will look awkward that a legislature should pass a measure restricting delegates to a particular community when probably one of the parties is a Nayar and the other a non-Nayar.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I second it.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I oppose the amendment for this reason. The women who will be concerned in these cases are Nayar women, and as my friend Mr. Joseph Panjikaran put it pointedly before the House, it is in deference to the sentiments of the Nayar Community that this House generously passed the previous amendment. Now, questions of absolute justice and equity will arise if the discussion is carried on on its own merits. As this House, the members jointly and severally, have generously accepted the position that the sentiments of the Nayar community should be respected, and considering the fact that it is only Nayar women that will be parties to such cases and that non-Nayar women cannot be parties, I trust that my friends belonging to communities other than the Nayar community will accept the suggestion, because, after all, it is all due to the honour to womanhood. Other questions do not arise, and I trust these arguments will not be availed of by the members who are prepared to respect the sentiments of the Nayar community.

MR. JOSEPH PANJIKARAN (*Shertallai*): I wish to know whether there is any case in which any woman shall be figuring as a party except a Nayar woman.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): She may come in as a petitioner and attribute adultery to her husband and it might be alleged that adultery was committed with a non-Nayar woman.

MR. JOSEPH PANJIKARAN (*Shertallai*): I will explain the position. The Nayar wife of a Brahmin puts in a petition for the dissolution of marriage on the ground of adultery of her husband. It may be that the Brahmin husband might have committed adultery not only with the Nayar woman but with the women of other communities. In this case the non-Nayar woman has to figure as a co-respondent.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Seeing that the old expression in the Clause has been deleted and that no woman need be brought on record as co-respondent, that question has to be answered in the way in which it will satisfy Mr. Joseph Panjikaran. I say that such instances will not arise.

MR. A. HOOGEWERF (*Nominated*): I think Mr. Krishna Aiyangar's objection is absolutely reasonable. The former provision was

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passed and I have voted for it. It was on a communal basis. And now, when the husband is a Brahmin and the wife a Nayar, I think the principle of give and take must be accepted and the Brahmin must have an opportunity of expressing his view on the question. It must not be absolutely the Nayar view that should be represented there. If you want to introduce communal view in that case, you must introduce it here also. Therefore I support Mr. Krishna Aiyangar.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is only one argument to which I may make a passing reference, namely, the argument put forward by Mr. T. K. Velu Pillai on the ground of chivalry. I shall not be considered to be lacking in chivalry if I press my amendment to the vote. No doubt, as he put it, in view of the amendment that has already been adopted only one could be *pro forma party*. The other party must be either a Nayar or a male representative of some other community. It is open to that identical Nayar lady to come forward as a petitioner imputing misconduct to the respondent in company with a woman of some other community. It is not a case where it could be said jurymen only will be able to answer the question satisfactorily. If, as they say, they know thoroughly well the ins and outs of the life in the Nayar *tarwad*, they will probably be better judges when the charge of adultery is with regard to a member of the Nayar community itself. I may say that they may be absolutely incompetent to determine the correctness or otherwise in an allegation attributing misconduct to the husband in company with a woman of some other community. The non-Nayar woman in such a case is the co-respondent though not actually brought on record.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I wish to know from Mr. Krishna Aiyangar whether such a contingency is not possible under the Parsi Marriage and Divorce Act.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If my friend Mr. Narayana Pillai seems to think that the whole controversy is to be settled from start to finish with the help of the Parsi Regulation, I must say: "By all means, let him have it." But I am not prepared to refer to a parallel legislation in other countries as a means of guidance though I am not for excluding it. The Parsi Regulation does not contemplate the marriage of a Parsi with a non-Parsi. My friend forgets that. That is the fundamental difference.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I shall only put a question. I have my personal explanation for it. He drew an argument that a stranger to the community may also be implicated. Such a contingency, I say, arises under the Parsi Act also. Why does he avoid that aspect?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The Parsi Regulation distinctly contemplates sexual union only between Parsis while the Nayar Regulation contemplates union between Nayars and certain representatives of the Hindu community. We are not to be guided by analogy in such matters.

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[Rao Bahadur K. A Krishna Aiyangar.]

If a Nayar has got the capacity to determine correctly the state of things obtaining in the inner bed chamber in Nayar households, from that very fact I say that they will be incompetent to judge the state of things obtaining in the bed chamber of some other community. So it will be unfair for us to say that they shall be the sole and the only correct judges to form correct conclusions on matters affecting other communities as well. I simply point out the basis of reasoning supporting my amendment. I am just bringing to the notice of the Council the other special reasons also, such as the principle of give and take spoken of by my friend Mr. Hoogewerf. One side is absolutely protected, namely, the case where the parties are exclusively Nayars. But there is the other side also. There is the incapacity of Nayar delegates to judge the state of things with reference to other communities. Is it their idea that all except Nayars are incompetent and that only Nayars are competent to judge the real state of things with reference to other communities also? I do not think that position will be seriously taken up. I just say that, consistent with the principles taken up, they may make a similar concession to other parties that come before the court. It is not enough if the delegates are honest; they should be above suspicion also. I am merely putting the question to this House, whether this House believes that the Parsi Regulation is the last word on the subject. I am inclined to think that the progress of ideas in all societies will certainly justify a more generous departure from the Parsi Regulation. I therefore press my amendment to the vote.

PRESIDENT: Mr. Krishna Aiyangar's amendment runs as follows:—

"The Government shall, in accordance with rules to be framed, appoint persons within the jurisdiction of each District Munsiff to be delegates to aid in an enquiry under this Chapter. Where all the parties to the enquiry are Nayars the persons so appointed as delegates shall be Nayars and their names shall be published in the *Government Gazette*. The delegates to aid in an enquiry shall be selected by the court in rotation from the delegates appointed for each court and in case where all the parties are Nayars the delegates shall all be Nayars."

The amendment was then put to the vote and lost, 18 voting *for* and 24 *against*.

Mr. N. Ramakrishna Pillai's amendment, running as follows, was then put and carried:

"and the decision on the facts in respect of the grounds for dissolution shall be the decision of the majority of the delegates before whom the trial is held, questions of law and procedure alone being determined by the presiding Munsiff."

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Probably another question that may arise is whether it is desirable to give the parties the power of challenging delegates selected by the court itself. Out of a large number of delegates that may be appointed by the Government and attached to a particular court discretion is given to the judge to make the selection. Therefore there is no provision for challenging.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): With respect to the query I may satisfy my friend at once. The Parsi Marriage and Divorce Act itself does not lay down that there is right in a party to challenge the jury or delegates. All the same, I will refer my friend to the decision reported in 43 *Indian Cases*, page 71, where the court observes that the right of challenge is available to any party with respect to any delegate before the proceedings are started and, as such, there is no difficulty. So there is no provision in the Bill with reference to—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is there any serious objection to giving the right of challenge?

MR P. K. NARAYANA PILLAI (*Ambalapuzha*): Absolutely no objection, but only the right of challenge must be exercised as early as possible and it is available to any party. The rules also are to be framed by the Government.

PRESIDENT: The amendments to be moved with reference to this sub-clause have been exhausted. The wording of the sub-clause seems to be very important

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am prepared to accept Mr.Subba Aiyar's suggestion as regards the draft of the Clause empowering Government to frame rules.

PRESIDENT: I would request some member to move another amendment to give the Government the power to frame rules. The amendment must be formally moved in regard to that also.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): I would suggest that the High Court may frame rules to regulate the procedure under this Section.

PRESIDENT: Do you move it as an amendment?

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): No, it is only a suggestion.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): "Government may also frame rules prescribing the procedure to be followed under this Chapter."

MR V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know whether that will quite do. We have the provision that the Civil Procedure Code shall apply. For what particular purposes the rules may be framed must be stated in detail.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It must be said that the rules to be framed may supplement the provisions of the Civil Procedure Code because the provisions of the Civil Procedure Code will be generally the law. Supplemental rules may be made.

PRESIDENT: I am afraid you will have to think over it before you go on.

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[President.]

The Council adjourned for lunch at 2-10 P. M. and re-assembled at 3-8 P. M.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have an amendment ready, and if the House has no objection, it may be adopted. I propose that the existing section be marked as sub-clause (1) and the following be added as (2):

"Government may also frame rules—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It will have to be marked as (1) (ii).

PRESIDENT: The existing sub-clause may be marked (*a*) and Mr. Subba Aiyar's amendment as (*b*).

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, Sir. The following may be added as sub-clause (8) (*b*):—

"*Government may also frame rules providing for—*

the qualification of the delegates,

the number of delegates required for each trial,

the choosing of the delegates,

the duties of the Munsiffs and of the delegates other than those specifically provide for,

the procedure to be followed in case of differenec of opinion among the delegates,

the interference by the High Court with the verdict of the delegates.

and generally for the purpose of giving effect to the provisions of paragraph (a) of this sub-section"

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*) I would substitute 'selection' for 'choosing.'

MR. V. SUBBA AIYAR (*Additional Head Sirkr Vakil*): I put it like that because in the Criminal Procedure Code the selection of the jury is spoken of as 'choosing of the jury.'

MR. P K. NARAYANA PILLAI (*Ambalapuzha*): I am thankful to Mr. Subba Aiyar and I accept his amendment.

The amendment was put to the vote of the House and accepted *nem con.*

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If it will not be out of order, I would suggest a small alteration to sub-clause (5).

PRESIDENT: It has not yet come up for discussion. Sub-clauses (4), (5), (6) and (7) are standing over. We have to go back to them.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): We may now consider the whole of sub-clause (4).

PRESIDENT: We now come to sub-clause (4) It reads thus:—

"Subject to the Code of Civil Procedure and the Limitation Regulation applicable to appeals from original decrees, an appeal shall lie to the High Court at the instance of any aggrieved party from any decision of the District Munsiff relating to dissolution, or award or both, except when it relates exclusively to the costs; and when an appeal is preferred, court fee shall be levied on the value of the subject matter in appeal under the Court Fees Regulation."

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would also add 'and of the rules framed under sub-section (8).'

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I accept the amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I have to move an amendment.

PRESIDENT: Does the House accept Mr. Subba Aiyar's amendment, *viz.*, the words 'and of the rules framed under sub-section (8)' to be added to sub-section (4)?

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): It is to be added after the words 'Civil Procedure Code' in sub-section (4).

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The word 'and' may be added subsequently. 'Rules framed under sub-section (8) and the Limitation Regulation' will do.

The amendment that the words 'rules framed under sub-section (8)' be added between the words 'Procedure' and 'and' in line 1 of sub-clause (4) of Clause 8 was then put to the vote of the House and carried, *nem con.*

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): Consequent on the amendment with regard to sub-clause (8) I propose another amendment. According to the amendment to sub-clause (8) questions of facts will be decided by the delegates. I should like to move a proviso. It is this:

"*Provided that an appeal shall lie from the decision regarding dissolution only when it is contrary to some law or usage having the force of law or on substantial error or defect in the procedure or investigation in the case which may have produced an error or defect in the decision and on no other grounds*"

PRESIDENT: The Section already reads thus:—

"An appeal shall lie to the High Court at the instance of any aggrieved party from any decision of the District Munsiff....."

In addition you propose to add a proviso?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): The proviso that I want to add is not inconsistent with the Section. My proviso is as follows:—

"Provided that an appeal from a decree for dissolution shall lie only on the ground of the decision being contrary to some law or usage having the force of law or of substantial error or defect in the procedure or investigation of the case which may have produced an error or defect in the decision and on no other grounds."

With respect to the decree for dissolution it was provided that the question of fact would be decided by the delegates and that the question of law or procedure alone need be considered by the Munsiff. My amendment provides that an appeal with respect to it shall lie only in case there is an error of law or of procedure.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What about the compensation?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): With regard to compensation the whole question of law and of fact should be

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[Mr. K. Parameswaran Pillai.]

decided by the appellate court. My amendment is consequent upon the accepted amendment with regard to sub-clause (8). According to that amendment it is provided that the delegates should decide questions of fact, and the judges, only questions of law or procedure. Naturally an appeal will lie only with regard to questions of law and procedure.

MR. M. N. PILLAI (*Trivandrum*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): With reference to that amendment I may say that we have just now provided for interference by the High Court with the verdict of the delegates, if the verdict is not in accordance with law or usage having the force of law or if there is any failure of justice consequent upon any material irregularity or any such thing. Therefore, I do not think it necessary to provide specifically for the purpose. The words 'relating to dissolution, or award or both' may be deleted. 'An appeal shall lie..... .....)..against any order of the Munsiff,' I believe, that will serve the purpose. We have empowered the Government to frame rules. In other words, the High Court which exercises revisional powers in all civil and criminal suits will have the power to interfere in these cases also.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I wish to know whether the appellate jurisdiction of the High Court may be interfered with by rules.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is only under circumstances of error and failure of justice and such other circumstances that the High Court has got the power to interfere. It is seen that, even as it is, an appeal shall lie to the High Court.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Can we entrust the Government with the power of defining the circumstances under which the High Court shall interfere with the decision of the lower court?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The amendment that has been passed provides for such appeal in case of failure of justice or any other error.

PRESIDENT: You have just moved an amendment empowering the Government to frame rules with regard to interference by the High Court with the verdict of the delegates.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is in regard to the interference of the High Court in regard to the decision of the delegates. Now, in regard to an appeal from the decision of the Munsiff I do not think it would be proper to invest the Government with the power of making rules under what circumstances the High Court should interfere in any judicial matters. It is, therefore, necessary that in this enactment itself we should provide the circumstances under which the decision of a lower court may be set aside on reference

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to the High Court. Whether on matters of fact or of law, the High Court alone shall interfere with the judgment of a Munsiff. It is, I submit, a matter for the House to decide and that power cannot be delegated to the Government.

PRESIDENT: According to the amendment to sub-clause (8) that has already been passed, the Government have been empowered to frame rules regarding the circumstances under which the High Court should interfere with the verdict of the delegates.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is entirely revisional.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There are direct appeals. In such cases, whether the High Court is to interfere in a question of fact or whether it should be confined to cases of erroneous decision or of procedure, that is a matter which we must decide here and not by the Government by the rules which are to be framed.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I thought that the verdict of the delegates should be accepted by the court and that the court had no voice in the matter. For, if the verdict of the court is final, it is only under certain specified circumstances that it would be open to the party to appeal to the High Court to set aside the verdict. Such circumstances are specified in the provision for the rules to be framed by Government under sub-section (8). Even at present, it is only under certain circumstances that a party can prefer an appeal against the decision of the Munsiff. So no specific provision is necessary for the purpose.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I draw the attention of Mr. Subba Aiyar to the fact that the Government have been given the power to frame rules only for the purpose of directing the procedure in such suits and that a special provision has to be made in regard to the preferring of appeals to the High Court?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Even if the rules are framed they cannot be expected to be exhaustive. It was practically agreed to by the House that Government should have the power to frame rules in respect of these matters. If we mean providing a separate Section for each contingency we shall have to insert so many Sections. The power of appeal is there. The only question is as to the circumstances under which one can prefer an appeal.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I wish to know from Mr. Subba Aiyar whether it should not be specifically provided that there shall be an appeal from the decision of the lower court in regard to compensation.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, certainly. I only oppose the special proviso of Mr. Ramakrishna Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I think, Sir, that the right of appeal being the creature of the Statute, it is better that we include the right of appeal within the scope of the Bill. Therefore, I think Mr. Ramakrishna Pillai's amendment is acceptable. My friend's

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[Mr. K. Parameswaran Pillai.]

contention with respect to the power given to the Government relates only to the question of disturbing the verdict of the jury and not of the Munsiff. In the latter case it is necessary that the scope of the appeal must not be absolute and that the High Court should not be allowed to roam over the whole question of fact. It is for that purpose that a specific provision is required. I therefore think that it must be accepted.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanûr*): My submission is that the provision relates to the right of appeal and that, as such, it should not be left to the discretion of the Government. We do not say anywhere in the Clause that the verdict of the delegates is final. It is necessary therefore to define what exactly is the nature of the verdict given by the delegates, whether it is final or whether an appeal shall lie on the decision of the delegates. That question cannot be left to be governed by rules to be framed by the Government. It is ordinarily not so done anywhere, the question being a question of right. Under these circumstances, it is necessary that an amendment like this should be accepted. I have no objection to changing the wording of the amendment and making it shorter. That may be done. If there is any other suggestion, I am willing to adopt it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am just suggesting for my friend's consideration whether "provided that the order of the court below as regards dissolution shall not be varied by the High Court on the grounds of" etc., will not be sufficient.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is the proper form.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I would suggest the following form:—

"No appeal shall lie against a decision of the District Munsiff relating to the dissolution of marriage except on the ground of the decision being contrary to some law or usage having the force of law, or of some"—

PRESIDENT: That is defective in grammar. It must be 'to.'

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is correct. He is only reading from the other Code.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): "or of some substantial error or defect in the procedure or investigation of the case, which may have produced error or defect in the decision of the case, and on no other ground."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): For the expression "relating to" I would suggest "in so far as it relates to."

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It is only the language that was used in his previous amendment that I am now using.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There are two grounds and that is why I say "in so far as it relates to" is better. In so far as it relates to dissolution, it shall not relate to the other.

The amendment of Mr. K. Paramesvaran Pillai was put to the vote and carried.

PRESIDENT: We will now proceed to sub-clause (5). It reads as follows:

"(5) In so far as it awards payment of compensation or costs, an order of the District Munsiff or an order passed on appeal, shall, subject to the provisions of the Limitation Regulation regarding the execution of decrees, be executed as a decree."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have got an amendment to that Clause, which has been printed in the agenda. It is: Add the following at the end of sub-clause (5):

"*Provided, however, that an order of a Munsiff awarding compensation shall become executable only on payment of court fee on the sum adjudged.*"

Now my reason for putting in that amendment is that in the case of execution of decrees by the respondent he should be required to pay court fee. It was moved by Mr. P. T. Thomas that the respondent should be asked to pay court fee on any claim for compensation that may be made in the written statement. I did not speak either for or against that motion for the reason that the legislature has followed one definite course of assessing court fee on the compensation decreed. Mr. Narayana Pillai paid a compliment to the wisdom of the Legislature when it enacted the Nayar Regulation of 1088. I would appeal to him to remember that in discussing my amendment. Now, in the first place, the Nayar Regulation accepted this proviso and it was found necessary that before a respondent applied for execution of the decree as to compensation, the respondent should be asked to pay court fee on the decreed amount. That was the provision there. It was the provision in the Bill introduced by Mr. K. P. Raman Pillai. It was the provision that was found when Mr. Changanachery Paramesvaran Pillai submitted a Bill himself. And I do not see why that should be omitted by the Select Committee. I may, before considering some of the objections that were raised in the course of the discussion of Mr. P. T. Thomas's amendment, say that we have committed ourselves by enacting that, before an order of compensation is executed by a respondent, the respondent should pay court fee, when the House passed the Ezhava Bill through the second stage. So that, that has been accepted in the Ezhava Bill. The Ezhava respondent has to pay court fee. I have spoken so far as regards the policy of the legislature on the previous occasions. I do not see that any case has been made out for a departure in the case of the Nayar Regulation. Now in regard to the general principle of levy of court fee itself, it was suggested that court fee should be paid only on the claim of the plaintiff. Court fee will be paid on the claim of the plaintiff and the court will be satisfied with it, provided the decree is executed by the plaintiff. But whenever a defendant executes it—

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[Rao Bahadur K. A. Krishna Aiyangar.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether there is any provision with respect to the payment of compensation in the Cochin Nayar Regulation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not want Mr. Narayana Pillai to copy the Cochin Nayar Regulation when it suits him.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Let him answer, Sir, before he proceeds.

PRESIDENT: The answer is implied.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): When we copy the Cochin Regulation, we should copy it in every other matter and I say that that Bill was not introduced in this Council and it was not discussed and therefore that should not be adopted as a safe guide. Leaving alone that aspect, let us discuss it on the merits of the case. So far as our law is concerned we have committed ourselves to a definite policy. When the defendant wants to have a decree executed, he must pay court fee. During the discussion of Mr. Thomas's amendment, it was said that in a partition suit, or in a suit for accounts, when the defendant gets a decree, the court should realise the court fee when the party applies for execution. That is a point which distinctly supports my theory that the policy of the legislature is that court fee should be paid before the defendant applies for the execution of the decree. Then going to the other argument that in the case of improvements it is not done, I may at once say that in the case of mortgage suits there is a specific provision that court fee need be paid only on the mortgage amount. Though there was a difference of opinion as regards payment of court fee it was ultimately decided by the High Court in a full bench ruling that no court fee need be paid, but, all the same, the decree was that the plaintiffs do recover the property on payment of such and such an amount. The decree was not in favour of the defendant. In the case under consideration it is the respondent that applies for the execution of the decree and not the petitioner plaintiff. Whether we take the analogy of partition account or mortgage suits, or the policy of the legislature, the amendment is necessary. I therefore appeal to the House not to stultify itself by rejecting the amendment after having laid it down in the Ezhava Bill. The Council should not make a communal distinction in the matter.

MR. N. KUMARAN (*Nominated*): Why not we make an amendment in the Ezhava Regulation?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is too late to think of it now.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I second the amendment.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I oppose the amendment. My friend appealed to my sense of fairness when he said that some of the existing provisions of the Nayar Regulation happened to prove commendable to me and that therefore I must accept the other Sections also. If that is the case, there is no reason why the Nayar Regulation should be amended. Then he said there must be uniformity with regard to the Nayar Regulation and the Ezhava Regulation. So far as that is concerned I would say that the Ezhava Regulation may be amended.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It has been passed by the Council.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The third reading is not yet over.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): But the non-official members cannot make any amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Government reserve the power of making amendments. Then with regard to the Court Fees Regulation, evidently my friend is confounding a good deal. Certainly I concede the fact that there are provisions in the Court Fees Regulation where, before an execution is taken out, in regard to the execution of certain decrees, court fee has to be paid. But they are all decrees in suits. That distinction is conveniently forgotten.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know what difference it makes so long as it is a decree?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Let me give my arguments.

And then, my friend said that this is a petition which comes under the preceding Sections which have been accepted. If, as a matter of fact, for any petition payment of court fees on the *ad valorem* scale is necessary, I would ask my friend to consider payment of court fees under the Insolvency Regulation. A receiver is appointed and lakhs and lakhs of rupees are decreed; yet absolutely not a cash is made payable in the shape of court fees for the payment of such amount. I ask, was not the wisdom of the legislature quite alive then? That is the sort of thing done in the case of a petition under the Insolvency Regulation. Here also it is a petition. It is the business of the court to take it up. To say that there must be payment of court fee for that is not correct. Evidently the wisdom of the Cochin legislators is for this provision being deleted, though there are other provisions in that Regulation which are not good for our purpose. With reference to the judgment of the High Court my friend would have probably interpreted the whole Court Fees Regulation quite the other way. But the High Court has come to the rescue of the litigants. Considering all these facts the House should take into consideration the ordinary case of petitions and the difference that would exist in an ordinary suit.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, the analogy of the Insolvency Regulation is absolutely without force,

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[Mr. V. Subba Aiyar.]

because there is no order of the court which is sought to be executed by any particular individual. And the provision in the Insolvency Regulation is that, when the debtor is not in a position to pay the creditors, a receiver is appointed and he takes the assets of the judgment debtor. All the creditors who are not in a position to realise their amounts, will realise very little if all of them are allowed to file suits. Thus it will be seen that it was in the interests of the public that such a provision was made. I do not think that there is any analogy between the Insolvency Regulation and the Regulation we are now considering.

With reference to the other aspect, that the one is a suit and the other a petition, I do not think that argument has got any force whatsoever because virtually it must be regarded as a suit. The appeal is also provided for on that basis. In this particular case it is not on the amount of compensation claimed but it is only on the amount decreed in favour of the respondent that he has to pay court fees.

I do not see why a departure should be made in this particular respect and I leave it to the House to decide whether we ought to be consistent or not.

The amendment was put to the vote and carried.

PRESIDENT: Sub-clause 6 runs as follows:—

"Save in so far as they may be inconsistent with anything contained in this Section, the provisions of the Code of Civil Procedure relating to the trial of a suit shall apply to all proceedings under this Section:

Provided that all proceedings under this Section either before a court or before a commissioner appointed by a court shall be held *in camera* and that the publication of any account, excepting the final order and decree of such proceedings, shall be punishable with simple imprisonment for a term of six months or with fine which may extend to Rs. 1,000 or both:

Provided also that the parties may give evidence against each other by means of affidavits and may be compelled to appear to give oral evidence only for cross-examination and re-examination on the affidavits."

MR. C. SANKARA MENON (*Quilon*): I propose the following amendment. Insert the words '*or with rules framed by Government under Sub-Secton 8*' between the words 'Section' and 'the'.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I accept it.

PRESIDENT: You have to insert those words. Then it will read as follows:—

"Save in so far as they may be inconsistent with anything contained in this Section or with rules framed by Government under sub-section 8, the provisions of the Code."

The amendment was accepted by the House.

MR. C. SANKARA MENON (*Quilon*): In the proviso, after the words "*in camera,*" I propose that the words '*the press and the public shall be excluded*' be inserted. I move this amendment because there is no provision specifically authorising the court to exclude them.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): *In camera* means not in open court.

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MR. C. SANKARA MENON (*Quilon*): "Camera" means the Judge's private room.

The amendment fell through for want of seconding.

MR. C SANKARA MENON (*Quilon*): I beg to bring in another amendment: for the words, 'excepting the final order and decree' substitute "*excepting the decretal portion of the final order and decree.*"

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know from Mr. Sankara Menon whether taking the copy of the judgment by the appellant to his vakil for presenting the appeal, would not be publication. I merely ask for information whether according to him he would object to the judgment being put into the hands of the counsel by the appellant.

MR. C. SANKARA MENON (*Quilon*): The counsel also will have to go to the office. The whole proceedings will have to be put into his hands. Therefore I stated 'the publication'.

PRESIDENT: Has that been seconded?

As the motion was not seconded by anybody it fell through.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, the Clause as it stands is likely to penalise the party who takes the papers to his counsel who must be entitled to get certified copies from the court below, the judgment, the decree and the evidence that was recorded, both oral and documentary. Naturally, he takes these papers to his counsel and leaves them with the counsel's clerk. As the Section stands that may be regarded as publication. Please excuse me, Sir. I overlooked the presence of the word "account", therefore I have no objection to the Clause being passed as it stands.

PRESIDENT: I think it would be better if we state that "*publication of any account of such proceedings except the final order and the decree thereon shall be punishable.*"

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have no objection to accept the suggestion made from the Chair and I am thankful for the same.

The amendment was accepted.

PRESIDENT: Then we go to Clause 7 which runs as follows:

"The costs decreed in favour of the petitioner may be made payable by the co-respondent to the proceedings, if any."

Do you mean partially or wholly, Mr. Narayana Pillai?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is the power of the court to order the whole or part of the cost. The Civil Procedure Code does not contemplate divorce proceedings. In all the Divorce Acts it is particularly provided for the costs being made payable by the co-respondent also, if any.

PRESIDENT: In sub-clause (5) you say "in so far as it awards payment of compensation or costs, an order of the District Munsiff," etc.

That relates to the trial of a suit.

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[Mr. V. Subba Aiyar.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : But in addition to that I have made this particular provision. The costs as against co-respondent should be provided for. But it is in the discretion of the court to make him also pay costs. The Parsi Act allows the award of costs as against the faulty party, the co-respondent.

PRESIDENT : Your amendment to the Clause, as it stands, may not be quite right. So we will have to say "notwithstanding anything contained in sub-clause (5) the petitioner."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Even if the costs are decreed against the respondent the court should have power at the proper stage to make the co-respondent also pay the same. The cost incurred by the petitioner—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It must be under the decree.

MR. P. K. NARAYANA PILLAI (*Amblapuzha*): Yes. It may be made payable by the co-respondent to the proceedings if any

PRESIDENT : Do you object "to decreed in favour of the petitioner '?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : But all the same the wording is in order. The costs decreed in favour of the petitioner may be made payable by the co-respondent also to the proceedings, if any.

PRESIDENT : If you say "incurred by the petitioner" will it not include all the costs incurred by the petitioners for the award of the court ?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : Why do you change the word "decreed" ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Petitioner's costs are decreed and that may be made payable by the co-respondent also.

PRESIDENT : It was pointed out that it clashes with the provisions of the Civil Procedure Code and in sub-section 6 we have stated that the provisions of the Civil Procedure Code apply to the trial of divorce proceedings. In order to avoid any further inconsistency we may say that "notwithstanding anything contained in sub-clause" etc.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There is no inconsistency.

PRESIDENT : If there is no inconsistency, it is all right.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : It may be made payable by the co-respondent also, if any.

Sub-clause 7 was accepted.

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PRESIDENT: Then we proceed to Sub-Clause 9 which runs as follows:

"During an enquiry for dissolution of a marriage under this Chapter, the court may from time to time pass such interim orders and make such provisions in the final order as it may deem just and proper with respect to the custody, maintenance, education and marriage of the minor children, the marriage of whose parents is the subject of such enquiry."

Could you suggest a better expression than "the subject of such enquiry?"

MR P. K. NARAYANA PILLAI (*Ambalapuzha*): That is the language of the Parsi Act. If anybody would suggest a better language I would adopt it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of course the same expression is in the old Act.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): We may substitute the words "*the dissolution of the marriage of whose parents is the subject of such enquiry.*"

The amendment, as week as the amended sub-clause, were accepted by the House.

PRESIDENT: There are other amendments which we postponed for consideration yesterday, of which Mr. Subba Aiyar's amendment has been put and carried. I think we have done with the amendments up to Mr. M. N. Pillai's yesterday.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes. Fourteen amendments, after the amendment of Mr. M. N. Pillai were reserved on the motion of Mr. G. Paramesvaran Pillai, of which Mr. Subba Aiyar's amendment has been disposed of.

The following amendments were not moved:

MR. A. GOVINDA MENON (*Alangad* cum *Parur*):

Sub-clause (1.) Lines 2 and 3. Delete the words "after determining the amount of compensation, if any" and substitute the words "enquire into the grounds alleged in the petition and on proof of such grounds shall"

MR. C. SANKARA MENON (*Quilon*):

Sub-clause (1). Lines 2 and 3. Delete the words "after determining the amount of compensation if any" and add at the end of the first sentence the words "and then proceed to determine and decree the amount of compensation."

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*):

Sub-clause (1). Line 2. Delete "after determining the amount of compensation if any."

Line 4. Add at the end of the words "and then proceed to determine the amount of compensation if any."

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*):

Sub-clause (1): Line 3. Omit "if any."

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[Mr. A. Hoogewerf.]

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): Sub-clause (2) Delete the sub-clause.

MR. N. KUMARAN (*Nominated*):
Delete sub-clause 2 and substitute the following:—

Subject to the provisions of the Limitation Regulation, every order of the District Munsiff awarding compensation under this Section is appealable and executable as a decree under the Civil Procedure Code.

MR. V. SUBBA AIYAR (*Additional Head Sikar Vakil*):
Sub-clause 2. Line 1. Insert between "Procedure" and "and" the words "the Civil Court Regulation,"

Line 3. Delete the words "to the High Court".

M. A. GOVINDA MENON (*Alangad* cum *Parur*):
Sub-clause 2. Lines 3 and 4. Delete the words "the award of compensation or from any part of such award" and substitute the words "the decision of the District Munsiff under this Section."

MR. M. N. PILLAI (*Trivandrum*):
Sub-clause (2). Delete "(2)". Substitute the words "from the decree" for "from the award.....this Section."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*):
Sub-clause (2). Line 4. Substitute the words "made by" for the last "of."

MR. N. KUMARAN (*Nominated*):
Sub-clause (3). Delete and renumber the subsequent sub-clauses.

MR. M. N. PILLAI (*Trivandrum*):
Sub-clauses (3), (4) and (5). Delete

MR. A. GOVINDA MENON (*Alangad* cum *Parur*):
Sub-clause 4. Add at the end the following proviso:—

"Provided that all proceedings under this Section shall be held *in camera* and that publication of any account of such proceedings, except with the express permission of all the parties concerned, shall be punishable with simple imprisonment for a term of six months or with fine which may extend to one thousand rupees or with both."

PRESIDENT: Now we proceed to the consideration of Clause 8 as a whole as amended.

Clause 8, as amended, was put and carried.

Clause 8, as amended, was added to the Bill.

Clause 9.

MR. V. KUNJUKRISHNA PILLAI (*Chirayinkil*): Sir, on the grounds already stated by me the other day, I do not move the following amendment.

Line 1. Add the words "or male" after the word "female".

MR. A. HOOGEWERF (*Nominated*): Sir, I propose to add in Section 9 the words "or a male" after the word "female". The idea of having two wives at this time of the day appears to me abhorrent. You have prohibited polyandry by this Section. The Nayar Regulation prohibiting polyandry was passed in 1088. A woman taking a number of husbands simultaneously is reprehensible and unthinkable. You did right in making it penal to do so. It is now more than a decade since you made that provision. Is it not time enough to examine the

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position and see whether we cannot make some further progress? If a woman having a number of husbands is bad, is it also not almost as bad for a man to have a number of wives simultaneously? Is not the Nayar community sufficiently advanced to enjoy the benefits of a strict monogamous marriage? There are many sections of Christians distinctly less advanced than the Nayars, and they are strictly monogamous. The poor fishermen of the coast and the Nadar Christians are monogamists. In practice, most of the Nayars also are monogamous. Not a single educated Nayar that I know, has more than one wife. Why should my Nayar friends not give legal recognition to this custom by penalising polygamy also? The position of the wife has become hard now, with the difficulties placed in the way of obtaining divorce. It is most unfortunate that before the present Amendment Bill was drafted, the present sense of the community was not ascertained by the enquiry of a roving commission. If we had done so, I am sure the sense of the community would not have lagged behind that of the Ezhavas, in whose case 99 per cent. of the witnesses examined emphatically pronounced against polygamy; and this House has passed the second reading of the Bill prohibiting polygamy also in their case. There is a provision for monogamy in the Vellala Bill and there was a chorus of congratulations, even from some of the Nayar members supporting this provision.

If the Vellala can accept monogamy and if the depressed and untouchable Ezhava who is prohibited from walking along certain public roads can also be content with one wife, I find it extremely difficult to understand why such a progressive and educated community as the Nayar should have a plurality of wives, especially as their present custom and practice point towards monogamy. Why, I ask again, if our Nayar brothers across the border in the Cochin State are satisfied with one wife, the Nayars of Travancore should have more than one? It might have been all right when woman was looked upon as a slave or chattel. The Nayar woman is coming by her own. Just think of two or more educated Nayar ladies in a house, each with children and each trying to have the first place in the husband's heart; jealousy will reign supreme and they will be tearing off each other's hair and pulling out each other's eyes. It will be a case of pull baker, pull devil, every day. And the children would be fighting like Kilkenny cats. What peace of mind would the poor husband enjoy? His time will be greatly taken up in settling his wives' and childrens' quarrels. The harem is being done away with even in Turkey. I cannot but think that this provision will be a standing reproach to the community.

I was greatly surprised and disappointed to hear from the mover of the Bill that the provisions in regard to marriage and dissolution are based purely on the idea that marriage is a civil contract—probably like P. W. D. contract *(laughter)*. I have spoken on the spiritual aspect of the question and the sanctity of the marriage tie, when I spoke against divorce, on last Saturday. The Nayars are Hindus and I cannot understand why they are ready to undermine the matrimonial bond of its

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[Mr. L. R. Rajaraja Varma Koil Tampuran.]

sanctity enjoined by the Hindu religion. The material, the sexual and the carnal is so very evident in the civil contract. How can the children of such a union be brought up in the love of God when carnal pleasures stand foremost in the parents' minds? India is getting to be more and more spiritual every day and should not our social legislation help towards her spiritual regeneration rather than retard it? The peace and prosperity of society, as I stated before, is built on the life of the family. If you are going to have makkathayam there, should you not also have monogamy, which alone will install the wife as the queen of the household, which is her proper place? Where men alone are legislators, we have a sacred duty to see that the laws we make are not one-sided and solely in favour of the freedom of our sex. The woman is not represented in this House. Let us just imagine what a woman representative would have had to say on the subject. She would have whole--heartedly stigmatised the provision prohibiting polyandry and leaving polygamy alone as altogether one-sided and selfish, and put us all to shame. I am sure therefore that you will all agree with me in my proposal to remove this charge of one-sidedness from the provision and pave the way for the progress of the community by the formal abolition of a custom which no longer exists as a custom, and is repudiated by the enlightened community.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): May I know whether the word "male" includes non-Nayar husbands and Nayar husbands or whether it is intended only to include Nayar husbands?

MR. A. HOOGEWERF (*Nominated*): Both.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I heartily second the motion that is now before the Council. I wish to extend my knight-errantry without a lance and a spear into this field also.

PRESIDENT: Louder, please.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I wish to extend my knight-errantry without a lance and a spear (*laughter*) into this field also. But I would refrain from saying anything more than what Mr. Hoogewerf said, for he said it well, and he said it in all sincereity.

PRESIDENT: I observe that there are amendments to the same effect notified. The amendments to the same effect are proposed to be moved by Mr. Madhava Varriar, Mr. G. Paramesvaran Pillai, and Mr. Govinda Menon. Mr. Sankara Menon and Mr. Kumaran have something more to propose by way of amendment. I believe they will all speak on this and not move their own amendments.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): I am not going to move my own amendment as it is the same practically as that now moved and discussed.

MR. L. R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): Are we to assume that all the amendments are moved?

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PRESIDENT: All the amendments cannot be moved together and discussed.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I have myself tabled an amendment to the same effect and I would heartily support the motion of Mr. Hoogewerf. I thought that, after all, much need not be said to persuade this House to accept this amendment. The principle contained therein has already been accepted by this House when it considered a similar measure, namely the Ezhava Bill, and, as observed by Mr. Hoogewerf, the Cochin Nayar Regulation also recognises monogamy. Polygamy has been declared void in Cochin. In other words, in the social measures that this Council has handled we find this principle brought forward and substantially approved of. I do not think that any member of this House will seriously put forward the contention that polygamy is a virtue in itself. I find from the conversations that I have had with persons who uphold polygamy, or rather, who do not want a provision declaring polygamy illegal, that they raise the question since the practice is very rare and since the community also views with disfavour such polygamous marriages "why should there be a law delcaring the same illegal? Why should it be made penal? There is the enlightened sense of the community against polygamy. Are you not satisfied?" That seems to be the only seemingly valid objection ever put forward by those who do not want monogamy to be enforced by this statute. My only reply to them is that, if, after all, the community views with disfavour such a polygamous system and if the practice is also so very rare that it may not prejudicially affect the bulk of the community, then why not accept the principle of monogamy, especially in the light of the subsequent changes that you are making in regard to the law of marriage, the law of divorce, the law of intestate succession and the law of partition? My own impression is that, unless the marriage tie is as firm as possible,---and that has been echoed by my friend Mr. T. K. Velu Pillai when he supported the amendment of Mr. Govinda Menon in regard to the divorce law—unless therefore the marriage tie is rendered as firm as possible—the law of intestate succession and partition that we are coming to presently will have a pernicious effect. It will be a positive danger to the community. In so far as monogamy is being enforced by statute we are only doing justice—simple justice. For it was only yesterday or the day before that we passed an amendment whereby divorce is rendered extremely difficult, especially from the point of view of the women. So far as the husband is concerned, the facilities are greater for divorce. He can implead a co-respondent and prove adultery. So far as the woman is concerned, in that respect, she is positively at a disadvantage and it is most unlikely that any woman would come forward to prove a charge of adultery against her husband and thereby secure a dissolution. Further, the wife is to go without any compensation whatever, in case she seeks for divorce on the ground that her husband is insane or suffering from an incurable disease or there is any incompatibility of temperament, while the husband, even without divorcing the wife on any of the grounds whatever, is free to

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marry again or to have as many wives as possible, so much so that the husband would not go to the court at all for effecting a divorce. There will not be that incentive for the husband. What about the poor wife who cannot bear the husband but yet who finds it entirely difficult to get a divorce? In these circumstances let us see whether, after all, the balance is even.

This Council has a trust. You should consider that the wife is now in a much more difficult situation than she was before the amendment referred to above was passed. If so, my humble submission is: "Let not this Council take away what women can legitimately claim, namely, the rights of reciprocity." It may be argued, what can the husband do if the wife is insane or is suffering from an incurable disease? She will necessarily have to be divorced before the husband can marry again. Is it not a pity that, in case monogamy is not enforced, he can marry again and at the same time protect this poor helpless woman? That is one question that may be put. My only reply is: "look at the other side of the picture". What will happen to the wife having a husband suffering from the above disabilities. Insanity and incurable diseases are not the monopoly of women. The husband may also be suffering from insanity or incurable disease. The only course left open to the woman then is to seek divorce. She cannot remarry unless she gets a divorce—a divorce without any compensation whatever. She must take the risk of getting a husband or not, or die helpless without any protection from anywhere else, because she is adrift from the date on which individual partition is sanctioned. She is completely adrift. She cannot expect anything from her husband. The husband has divorced her or rather she is forced to take a divorce from her husband. On the other hand what is the compensation given to her? Nothing whatever. And look at the case of the husband. The husband is quite safe. He can marry again and the chances of remarriage for the husband, I need hardly tell you, are certainly more favourable than for a divorced wife. It will be extremely difficult for a divorced wife to get a husband as compared with the chances of re-marriage for a rich husband. So my submission, my humble prayer to this House, is to be fair to both sides when you legislate, especially when you have got the power to legislate. All the social measures that we have hitherto accepted do contain this provision. The amendments that you have already accepted logically lead to monogamy and I do not think that much need be said therefore on the necessity of securing this provision in the statute and especially when you are not putting anybody to any difficulty whatever. The bulk of the community would like it. And the evils otherwise resulting from the omission to accept this provision will, I am afraid, be far-reaching, and certainly one section of the community *i. e.*, the female population, will certainly not thank us for such an omission. So I would very strongly support Mr. Hoogewerf's amendment and commend it for the acceptance of the House in the altered circumstances created by the Bill before us.

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MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, after the very eloquent, ardent and passionate appeals that have been made to this House by my friends Messrs. Hoogewerf and G. Paramesvaran Pillai, it requires very great courage on the part of one to stand up and oppose any proposal to have compulsory monogamy among Nayars. I would request you to remember that in these matters every one of us has got his own personal inclinations, his personal practice and his personal opinion. There is also the function of the legislature which you cannot object to. So that, when I speak against the amendment you must conceive that, though personally of the most emphatic opinion that compulsory monogamy is a virtue, still remembering that I am standing here to legislate for a community which does not after all want compulsory monogamy, I trust—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know how Mr. Velu Pillai says that?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I will say that, so that my position needs not much of a defence.

MR. A. HOOGEWERF (*Nominated*): I beg to know from Mr. Velu Pillai what the present custom is among the *intelligentsia* of the community,—whether they are not as a whole, monogamous?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes; I am very happy to answer that question. I am quoting from my own speech at the time of the discussion. I have given figures. Polygamy is very rare among Nayars in Travancore, but the people are not in favour of a law prescribing monogamy by doing away with personal liberty. This is evident from the fact that only 395 Nayar graduate witnesses examined by the Committee were in favour of enforcing monogamy, while 410 were against it.

MR. A. HOOGEWERF (*Nominated*): May I know when it was? Has not much water flown under the bridges since then?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): That was about thirteen or fourteen years ago. Much water might have flown since—in the Ganges and the Karamanai rivers (*laughter*)—but not in respect of this question. If any body is prepared to place before me statistics on that question I may change my views. But so long as the notes are recorded and the evidence collected by the Marumakkatayam Committee remains, I think I am justified in maintaining that the bulk of the *intelligentsia* of the Nayar community is not in favour of compulsory monogamy—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I inform Mr. Velu Pillai that the Marumakkathayam Committee did not recommend full makkathayam and individual partition?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am sorry that my friend is misunderstanding the issue. I am not one of those who have sought for complete individual partition or for complete makkathayam. So far as I am concerned, that question does not arise. If my friend is not satisfied, I am prepared to give him my views on the

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matter. But I do not want to take up the time of the Council unless my friend is determined to have an answer from me, in which case I am prepared to give him one. This is the case not alone in regard to the Nayar community but other communities as well, and it has been recorded by the members of the Marumakkatayam Committee themselves that 95 per cent. of Indians and 98 per cent. of Persians and Muslims are monogamous. We have also to bear in mind the well-known facts that although in the Indian Empire there are civilised communities, more civilised than any in Europe and America, at any rate not less civilised than any of them, yet we find that compulsory monogamy is not enforced, and India is not inferior, either as regards the dearth of philosophical thought or in the material part of life, to the other nations, and the Indians are on the high road to national prosperity, and, because there is the absence of a law installing compulsory monogamy on particular communities, the progress of India has not been affected prejudicially. So that, whatever may be the excellence of monogamy as a principle, whatever may be the practice of other religionists and other communities in other parts of the world, so long as the powerful, important, wealthy and intelligent communities in India are not prejudiced by the absence of that law and that in spite of the absence of such a law they are still considered to be very respectable, decent and intelligent people, I should think that there is absolutely no necessity for changing the law in this respect unless the community demands it with one voice and—

MR. A. HOOGEWERF (*Nominated*): How can the demand be made in one voice? (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): That is not impossible. By that I do not mean that every one of the Nayars should come here and have his or her opinion recorded.

MR. JOSEPH PANJIKARAN (*Shertallai*): What is the sense of the female population in this respect?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Now that my friend has pointedly put the question, I may tell him that, although there is a large section of women who are against allowing their husbands to take more wives than one, there is a section also of women who are indifferent about the matter (*continued laughter.*) There are still others who are not for this compulsory monogamy.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from the speaker how he knows that some people are indifferent about their husbands?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am prepared to answer it. There are wealthy influential Brahmin jenmies and others who have married Nayar women according to the usage of the community. Among them it is only one man in a family that marries a woman from his own caste. If there are no children, the tarwad may come to rack and ruin. That is a fate which no Hindu

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would like. Before he could marry in his own caste he might have married a Nayar woman. So that, if he is to prevent his house from extinction and the line of his ancestors from complete perdition, he is to marry in his own caste. According to the suggested solution this can be done only after divorcing the Nayar wife through whom he may have a number of lively, beautiful, loving children (*laughter*), but with all that—

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. Velu Pillai whether he is answering my question?

PRESIDENT: Yes. He is answering your question.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes, in my own way. He will have to desert all his people, put them into poverty, break away totally from his own feelings and marry a caste wife. With regard to the specific instance, I know a certain police officer, whose name certainly I shall not be justified in mentioning before the House, but which I am prepared to give Mr. Panjikaran in private—and I suppose he will be satisfied when I say I am prepared—I know the instance in which a police officer's wife got so badly ill that all hopes of cure failed and the wife herself persuaded the husband to marry another woman. I know the man for a long time and I will satisfy Mr. Panjikaran that such is the case and that is not a solitary case. There are instances without number.

MR. A. HOOGEWERF (*Nominated*): I beg to ask Mr. Velu Pillai whether it was not true that at the conference of the Keraliya Nayar Samaj held at Trivandrum, at which Mr. T. K. Velu Pillai was present, a resolution for monogamy was passed and that he quoted it.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): My public activity extends over rather a long period. (*Laughter.*) And unless Mr. Hoogewerf gives me the date of the meeting and some report of the speech I made and a copy of the resolution, I shall not be able to answer him. But so far as I can remember I have never stated that I was in favour of compulsory monogamy. If I attend a meeting and a resolution is passed, I do not lose my individuality and merge in the individuality of the majority. That is a lesson which Mr. Hoogewerf might take from me. (*Laughter.*) If I attend a meeting, and if through my acquiescence or indifference any resolution is passed, that does not bind me. That is an elementary principle of law and practice. *Laughter.*)

MR. A. HOOGEWERF (*Nominated*): Is it not a fact that at the Popular Assembly repeatedly members come forward and ask for monogamy?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I do not carry all the Popular Assembly reports in my head. (*Laughter.*) The better way will be to place those representations in my hand and ask me what I think about the matter, and there again I may tell him that I am not bound by those representations. Now, Sir,——

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[Mr. T. K. Velu Pillai.]

MR. A. HOOGEWERF (*Nominated*): Is it not a fact that at the last Nayar conference held at Vaikam also there was a resolution passed in favour of monogamy?

PRESIDENT: Mr. Velu Pillai is not bound to give an answer.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I did not attend it. (*Laughter.*)

Sir, the question raised is no doubt an important one and so far as the non-Hindu members of this House are concerned—

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether he has stopped answering my question?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): The instance of the police officer I have already quoted. That is one instance, but there are several other instances which will show that several Nayar ladies of varying degrees of respectability (*laughter*), the very highest included, do not rebel against a husband who has got a caste wife. I shall give instances without number.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. Velu Pillai whether there was not a ladies' meeting in Trivandrum and whether they passed a resolution for monogamy?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Yes. Sir, I am not astonished at the question which Mr. Hoogewerf put me. But I am simply surprised at what Mr. Panjikaran asked me. (*Laughter.*) Travancore is a country which extends from Parur to Cape Comorin and from the Sahyadri to the Arabian sea. There are thousands and thousands of ladies and if a few of them meet in any particular place and ask us to legislate for compulsory monogamy without understanding all its implications (*laughter*), especially when the women of our country have not come forward in public life so much as they have done in other countries, any opinion recorded by them does not bind me, nor does it bind Mr. Panjikaran, here standing as a legislator. With all his prejudices Mr. Panjikaran as a Christian is different from Mr. Panjikaran, the legislator, and Mr. T. K. Velu Pillai, the man, is different from Mr. T. K. Velu Pillai, one of the legislators. That is the position which I may request him to bear in mind.

MR. A. HOOGEWERF (*Nominated*): What is the opinion of Mr. T. K. Velu Pillai as a Nayar? (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): As it is a very pertinent question, I will answer. Mr. T. K. Velu Pillai as a Nayar is allied to Mr. T. K. Velu Pillai the man.

MR. A. HOOGEWERF (*Nominated*): Is not the man different from the Nayar?

PRESIDENT: This must stop.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have not been able to complete my sentence. But, all the same, if people

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are inquisitive about matters, I have no objection to give my views. The important point to bear in mind is that, whatever opinion might have been expressed at a solitary meeting of ladies, that ought not to bind us. We may respect it, we may consider it also, but we are not estopped by it. In these days we come across instances in which people come forward with professions of ideals which do not apply to them. That is one of the dangers of modern civilised life. A person may have a certain practice, but when he goes to the platform he speaks in a different manner and tries to show to the world that his ideals are so excellent. (*Laughter.*) I am referring to the circumstance just to show that the isolated opinions held by certain women cannot be considered to be the opinion of womenkind throughout Travancore.

MR. JOSEPH PANJIKARAN (*Shertallai*) : May I know from Mr. Velu Pillai whether any single woman has come forward and asked for polygamy?

PRESIDENT: He has already answered that question.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*) : Our women do not figure prominently in public life. They know that their interests are safe in the hands of their near relations. I do not want to go on in this strain ; but I had to answer all these questions. Therefore, I took more time than was anticipated. But my position is only this—that when it is said by my learned friend Mr. G. Paramesvaran Pillai that the instances of polygamy among Nayars are very small, my argument is that the function of legislation being only to legislate for the bulk of the community, no section need be penalised simply because they are doing what they have been doing for hundreds of years, what other communities in similar circumstances are doing and that without forfeiting any honour or estimation on the part of the other nations.

MR. A. HOOGEWERF (*Nominated*): Does the vote of the minority in this Council count?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): That is a point which is to be answered only with reference to constitutional law. I may have to discuss various things before I give a proper answer.

Now, Sir, let us take the case of western countries. Compulsory monogamy was in existence for hundreds of years and the Christian religion also has been preaching about the necessity for monogamy. But, with all that, what is the result? Here is a small sentence taken from a letter contributed to the Press by Lord Buckmaster, one of the members of the Privy Council. He heard four hundred undefended divorce cases in the summer time of 1922. Basing on this and other experience, he wrote to The *Times* a strong letter urging the reform of the law of divorce in courts of law. Lord Buckmaster says: "Bigamy was extremely common, but entirely confined to poor persons, for bigamy is not a vice of wealth; the rich can find other less illegal outlets for their emotions." If that is the result

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of compulsory monogamy in one of the most advanced countries of the world where public opinion and religion compel people to follow that rule and if the results are so dangerous, I question the wisdom of driving our people to the same conditions of having a compulsory law of monogamy. The so-called reciprocal question does not arise.

MR. A. HOOGEWERF (*Nominated*): May I inform Mr. Velu Pillai that almost all the civilised people and the whole of the English Press criticise Lord Buckmaster's view, including the women in Parliament?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I do not say that the views of Lord Buckmaster are the last word on the question. I only mention the fact and that is true.

So that, Sir, it is not after all necessary and it will not make all men saints; while, in the particular circumstance of our country, if there is a law of compulsory monogamy, there will be several people who will not thank us, because compulsory monogamy means preventing them from perpetuating a family, and preventing them also from having a healthy existence in our planet. So that I beg to say that, while as a matter of principle I am prepared to recognise that monogamy is a very good ideal, compulsory legislation on this subject, when the public opinion in respect of it has not been recorded in a clear and unambiguous manner, is undesirable, and I must oppose the amendment of Mr. Hoogewerf, however valuable it may be in other directions.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I also oppose the amendment. I do not think there is any necessity for the legislature to interfere in that respect. As has already been stated by some of the learned members the practice of polygamy is very rare. We have already placed several restrictions in the way of free divorce and I think it will not be fair to insist on monogamy. Now my view is that if you insist on monogamy that will give rise to an increase in divorce. I do not believe that is going to be advantageous to our women-folk. So I strongly oppose the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am also very sorry to oppose the amendment of Mr. Hoogewerf. The main ground on which Mr. Hoogewerf proposes this particular amendment is that monogamy is a good thing. Granting for argument's sake that it is a correct statement, about which I have my own misgivings, there are various other good things in the world for which we do not legislate. For example, we seek, as far as possible, to prevent divorce, and one of the grounds for divorce is cruelty. Cruelty is due occasionally to the addiction of gentlemen to liquor. If then we want to prevent cruelty, the Nayar Regulation would also have to provide for temperance, a measure that would have been good to that extent at any rate. Does this legislature propose to provide for temperance in the Nayar Regulation? Nobody does it. Therefore I say that, simply because a view might probably have got deep into one's soul by close association, it would not be right, I

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think, to press it in regard to others whose circumstances are entirely different. To bind other parties by one's own conviction of the virtue of a particular principle may be in itself philosophical but not practical. That is one aspect of the question which this House will have to bear in mind.

There is Mr. G. Paramesvaran Pillai who comes forward with the case for absolute reciprocity to be brought about between the two sexes. He said, though not correctly, that in the Bill under contemplation there are provisions applying equally to man and woman. That is how I understood my friend. If my friend now says that he does not make that statement—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That was not what I said.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am very glad that he did not make that statement. It is not a sound argument to say that, in order to make reciprocal equality, polygamy should be put a stop to. Hitherto we had provisions in the Nayar Regulation only on the basis of the admitted dependance of women upon men. That is the status on which women have been dealt with.

MR. A. HOOGEWERF (*Nominated*): I wish to know why polyandry was done away with in the Nayar Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Because it does not exsist, no man should take to that in future. That is all the desire. That aspect of the argument also does not appeal to me. Then let us take into consideration the merits of monogamy about which my friend Mr. T. K. Velu Pillai just now reminded the House and on a prior occasion Mr. Krishna Aiyangar had much to say. I wish to point out one thing. So far as my experience goes monogamy is a good institution, provided the man and the wife are good people. But once the husband and the wife happen to be bad people---either the one or the other-then monogamy becomes a piece of trouble. The unconditional statement that monogamy should be adopted by all people irrespective of adherence to any particular principle is difficult to subscribe to. Then, further, it is an open question whether as a matter of fact the community is prepared to take up the position; in other words with respect to the women of the Nayar society the question arises as to whether they are prepared for it. Mr. Paramesvaran Pillai has been depicting in rather sombre colors the position of certain women or the position that certain women would be driven to. I do not think there is room for such gloom.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I shall describe the cases of women hereafter.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): As if they were already been given. It is very difficult to understand the position of women. For, the position of Hindu women, among whom I include Nayar women also, is such that, owing to their retiring modesty and their extreme aversion to publish their views, we have to come to a conclusion only by judging from the conduct and standard

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of those women in the country who have been submitted to the yoke of polygamy. Reference was made to the public utterances of some ladies in public meetings held in Trivandrum and elsewhere.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether he is aware of a resolution passed at a meeting at Neyyur on the Nayar Bill and also at Padmanabhapuram in regard to this matter?

MR. P K. NARAYANA PILLAI (*Ambalapuzha*): I must candidly admit the fact that I have no information regarding any such resolution. I am only stating that the normal condition of Hindu women, including Nayar women, being their retiring modesty, any public expression by any particular lady may be taken to be the opinion of a woman not quite normal in nature. She does not represent the normal variety of women in Hindu society. She may be advanced intellectually or probably deflected in some other direction. I do not reckon such women to be of a normal type. Therefore I look upon the utterances of such women as very dangerous. (*Laughter.*) So, I am sorry, I cannot pay as much regard as my friend Mr. G. Paramesvaran Pillai is prepared to pay, to such utterances and exceptional feminine inclinations.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I do not mean the utterances of women. I referred to the utterances of males of the status of Mr. P. K. Narayana Pillai himself.

MR. P K. NARAYANA PILLAI (*Ambalapuzha*): In this Assembly itself we have members of my status and of greater status than mine like my friend Mr. G. Paramesvaran Pillai who differ from me. Then why should we look elsewhere for agreement or disagreement of view? The question is whether it is purely on personal inclination or on a result of the study of existing conditions that the matter should be considered in this connection. The Nayar Regulation has been in full swing, and even to-day, it is in full swing and many elderly gentlemen took part in bringing it into existence. They did not think it necessary to provide for compulsory monogamy. I therefore submit that it is not time enough for the community to take to monogamy.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether he is not aware of the changes in the community?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I also say that the object of this Bill itself is to provide for the partition of marumakkathayam tarwads and incidentally to provide for inheritance from non-Nayars? These are the main questions that we have been discussing. By a side wind the question of monogamy is being introduced.

MR. A. HOOGEWERF (*Nominated*): May I know whether the opinion of Nayar members and Ezhava members who supported my amendments were also based upon personal opinion?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Then the only instances that have been quoted are the instances of the Ezhava

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Regulation and the Cochin Regulation. Unfortunately both these Regulations have not been set to working long. The Ezhava Regulation has not been placed on the statute book. As to the Cochin Regulation, one gentleman from Cochin, who is among our midst just now, was telling me the other day that even with respect to some serious provisions of that Regulation infringement was the order and observance the exception.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Will he point out one piece of legislation throughout the whole world in which divorce is allowed along with polygamy?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The Mahomedan Law and the existing Nayar Regulation. (*Laughter.*)

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Does he know that in the most enlightened part of the Mahomedan world there has been a change in regard to this matter?

PRESIDENT: You asked about law and he has given you the answer.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Does he know that in Angora among the most enlightened Mahomedans of the world a change has been effected in regard to this matter?

PRESIDENT: There are other Mahomedans in the world than the Mahomedans of Turkey.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): We quote only the most advanced section among Mahomedans.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is a matter of opinion. I fear nothing has been done even by the Angora Government. And even what little they have done is the subject of very serious controversy. The Khilafat having been abolished, the Mahomedans in India have not been looking with complacency upon the proceedings of the Angora Government. Even if it be such, I would ask Mr. Govinda Menon, is it the quarter from which we must draw the inspiration for legislation? Left to myself, not even as the last resort would I think of drawing upon that model prescribed by my friend. That is all beside the point. The question is this. With respect to the Vellala Bill it was said that a provision was made there. A leading Vellala gentleman of the community who has been co-opted as a member of this Council for that purpose made a very serious protest against such a provision in the Vellala Bill and we are not in a position to say whether the Vellala community is on the whole prepared to take it up. First of all, we have got the long-established practice supporting us. The chances that some of the women will be reduced to the ignominious position of becoming second wives must also be put along with the chances of whether they will be able to obtain their divorce. That aspect of the question is also to be taken into consideration. If we adopt the position urged by the mover of this amendment the women who have a chance of being reduced to the ignominious position of second

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wives would be declared not as wives but as something of a more unpleasant description under the names of concubine or some other repulsive name which need not be let known in the House. If that is the position to which the women of the Nayar community must be reduced, I cannot understand the wisdom of Mr. G. Parameswaran Pillai's position.

As regards Mr. Hoogewerf, I am quite sure he is advancing from the view that monogamy is a good principle. He knows very little about the conditions, troubles and customs of the Nayar community. So I would request the sympathetic gentlemen who are present here as members of this Council, to consider not merely their views and inclinations in this matter, which may be due to associations and experiences in their own community, but to take into consideration the effect that it will produce in another community, which is to be bound by the piece of legislation sought to be enacted. We will do well to foresee the complications if the long-established practice is so suddenly altered. If they think that monogamy is the pinnacle to which every community must rise and that their views and tastes alone must necessarily prevail even in respect to other communities, I think they are at liberty to vote in any way they like. But if they are going to regard the existing practice in the Nayar community, I beg to submit that they will have to vote, though much against their own conviction, against the amendment proposed by Mr. Hoogewerf, certainly in very good spirit, for which I am prepared to thank him.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : Sir, as the mover of this Bill I regret that I am unable to accept the amendment proposed by Mr. Hoogewerf. I fully appreciate the noble motive which actuated Mr. Hoogewerf to bring forward this amendment. Probably, there is much to be said in favour of monogamy in the abstract. But we have to take it in relation to a certain community, and what we have to consider is whether, in regard to that community, the time has come for insistence upon monogamy. To my Christian friends I would say that, probably as a reaction against the abuse of the Jewish law which permitted plurality of wives, Christian religion prohibited polygamy. Whatever may have been the original cause of the prohibition of polygamy, that it has been found in actual practice to be after all not so advantageous to the whole community as might be expected, is seen from the quotation which my friend Mr. T. K. Velu Pillai read from an article published by so eminent a judge as Lord Buckmaster himself. Now, apart from the Christian community, it appears to me that there are very few communities in the world who are monogamous in law. Take for instance the Egyptians or the Turks or the Arabs or the Chinese or other communities in India or Persia; in all these communities we find polygamy existing and monogamy has not been insisted upon. If in so many communities and races inhabiting such a vast area as Asia this polygamous law has been in existence, if in spite of the fact that, marriage is considered to be a religious sacrament and if also in spite of the fact that as a result of marriage

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inheritance automatically follows, I think there must have been very good reasons for not prohibiting polygamy altogether and for not acknowledging the very good benefits that have been claimed in favour of monogamy. In India, socially the most progressive community are Brahmins, and I do not think there is any other community whose marriage tie is so strong and so sacred as it is among Brahmins. In spite of that we find that they have not yet rebelled against the law of polygamy and they have not after all asked for any reform against the existing custom and for prohibiting polygamy. Now, in this House we have got to see whether the community, which till to-day has been following an entirely different system of inheritance, in whom marriage did not involve inheritance, among whom divorce was quite free, in regard to whom marriage is only a civil contract and among whom for about twenty years there was no law regulating marriage—whether such a community is fit for a monogamous law or not. You will find, Sir, that at the time the Marumakkatayam Committee took evidence there was a large volume of opinion, and there was even a small majority of witnesses who spoke, against the prohibition of polygamy.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Was the opinion of women taken at that time?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Some women were also examined. There was a large volume of opinion against the prohibition of polygamy.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What would be the trend of public opinion that my friend would gather from the various resolutions passed at Neyyur and Padmanabhapuram?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): You will find that the objection to polygamy came from educated classes and not from uneducated classes, because the report says that among the graduates examined there was a very large percentage against polygamy. Mr. Hoogewerf claims—and it was humorously refuted by my friend Mr. T. K. Velu Pillai—that much water had flown under the bridge since the Marumakkathayam Committee took evidence. My experience shows that much water has not after all flown in regard to this matter. Mr. Hoogewerf referred to a meeting held in Trivandrum nearly three years ago and the resolutions passed at that meeting. Over one of those meetings I had the honour of presiding and I know at that meeting a very large number of educated men, including many graduates, attended. In fact I may say that was the meeting of the Nayar Samajam which was attended by the largest number of educated men and graduates—

MR. A. HOOGEWERF (*Nominated*): Did the Nayar Samajam vote in favour of polygamy?

PRESIDENT: Please wait. Let us see what he is going to say about the Nayar Samajam.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There was such a large audience that it was difficult to determine whether the majority was in favour or against the prohibition of polygamy.

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They were so equally divided. Of course, by a show of hands roughly it was estimated that the majority was in favour of polygamy. But there was a very large number for the continuance of polygamy.

Mr. A. HOOGEWERF (*Nominated*): Was it a difference of two or three votes?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): Over seven hundred votes against monogamy.

Mr. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Did they vote for polygamy or against compulsory monogamy?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): Against compulsory monogamy.

Mr. A. HOOGEWERF (*Nominated*): May I know whether Mr. Paramesvaran Pillai knew that the Vaikam conference voted in favour of monogamy?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes; the Vaikam conference did vote in favour of monogamy. I do not deny that. But still I am not prepared to say, in view of the conflict of opinion which prevails in regard to this matter, that we have passed the stage of propaganda work. It is not yet time to make it the basis for legislation.

Mr. A. HOOGEWERF (*Nominated*): Was not Mr. Paramesvaran Pillai present at that Nayar Samajam? Is not a great deal made of the resolutions passed by that Samajam?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): I was present at that meeting, and we made a great deal of these resolutions. But the value that we give to these resolutions is only as propaganda work and not one fit to form the basis of legislation in regard to the Nayar community.

Mr. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Does Mr. Paramesvaran Pillai attach only that weight to the resolutions passed at that conference?

Mr. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is all. In regard to this particular resolution I do not attach more weight. We find as a matter of fact that we are not in a position to say that the community is still prepared to pass a law making monogamy compulsory. You will notice, Sir, that there is a growing opinion in favour of the law as education is spreading. But the economic condition makes the enactment of a law against polygamy impossible. Under these circumstances we may say that good ideas are spreading among the people and that there is a growing demand for monogamous law; but we cannot say that the community is still ready to accept the law of monogamy at the present day.

Mr. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know on what basis he arrived at that conclusion, *viz.*, that the community is not yet ready for compulsory monogamous law?

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MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That is the impression that I have formed from my experience of the country, from conversations with responsible people and also from a perusal of the report of the Marumakkathayam Committee. We are also making rapid progress. We have legalised marriage by statute. We have made divorce rather more difficult than it was ten years ago. I may say we have absolutely prohibited divorce now, so that in these matters we are making rapid progress. I may say at the same time that, so far as social legislation is concerned, we must take the line of least resistance.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Hear, hear.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In regard to polygamy I think we will be taking the line of least resistance if we do not prohibit it. When a community is not prepared to accept a law and if on account of the progressive opinion of a few of the people we impose a law like that of monogamy on such a community, it may lead to pernicious consequences.

MR. A. HOOGEWERF (*Nominated*): On what authority does Mr. Paramesvaran Pillai say that that community is not prepared to accept monogamous law?

PRESIDENT: That question has already been answered.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): If compulsory monogamous law is passed, people may try to evade the law. Polygamous marriages will continue to take place in remote places where the law is not known. Those who know the law might have recourse to illegal and undesirable means to satisfy their object. It will probably lead to very pernicious consequences, as in the case of drink in America where the people are not prepared for a law preventing the drink evil. On this ground I must very strongly oppose the amendment put forward by my friend Mr. Hoogewerf. I must also in this connection refer to the fact that the analogy of the Ezhava community cannot hold good in the case of Nayars, because the Ezhava community is a self—sufficing community. It has nothing to do with other communities. The Nayar community have got marital relations with other communities and with communities whose personal law does not prohibit polygamy.

MR. A. HOOGEWERF (*Nominated*): What about the Nayar community of Cochin?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In regard to the Nayar community of Cochin, they have passed a law, but I may submit that there they have not prohibited divorce.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know if there was a Legislative Council at the time the law was passed?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Even now I do not think there is a Legislative Council there. I think they have passed rules and regulations. For these reasons I submit I am sorry to

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say that I am unable to accept the amendment proposed by my learned friend Mr. Hoogewerf.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What has he gathered to be the trend of public opinion from the resolutions passed at Neyyur and Padmanabhapuram ?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There are resolutions in favour of polygamy and also against it.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Has he received any resolution supporting the continuation of the existing provision ?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have received resolutions supporting the Bill—the revised Bill—as a whole, which means that they accept the law in regard to marriage also.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): At an earlier stage of the discussion I had practically exhausted all that I had to say in support of continuing the existing law on the subject of marriage. I shall therefore confine myself to making a few observations which will help us to solve the question now raised by Mr. Hoogewerf. This is a piece of social legislation. Social legislation will be justified only if it is intended to get rid of a serious social evil. Are the evils of polygamy so rampant as to require a statutory measure to penalise polygamy and enforce monogamy ? Mr. Hoogewerf did not refer to the presence of actual evils in Indian societies or in the Nayar society which would justify a wholesale revolution on the subject of marriage.

MR. A. HOOGEWERF (*Nominated*): May I know whether there is any evil in divorce at present which necessitates legislation here on that question ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not quite follow my friend. I was not able to hear him. I am sorry therefore I shall not be able to answer it.

MR. A. HOOGEWERF (*Nominated*): I will repeat it. Were the evils of divorce so very heinous as to require legislation in this Council ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That seems to have been the sense of the House. There is no use in going back upon it.

MR. A. HOOGEWERF (*Neminated*): May I know whether—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I think he need not waste his breath. I do not propose to answer any further question of his. If his idea is that this Council must take the sense of opinion of all persons in the community that is affected by this piece of legislation, by numbers and by meetings and by the

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resolutions that were passed, I may say once for all that I do not recognise any wisdom in it. From the very nature of the circumstances it is absolutely impossible for this House to say whether the community as a whole is in favour of or against it. One thing is clear. The representatives of that community come forward and array themselves in two hostile camps. That is a sufficient indication of the lack of unanimity on the subject. Unless the advocates of monogamy are able to substantiate the existence of serious evils due to polygamy which require drastic remedies, I say this Council will not be justified in making any departure from the existing law. I want my Christian friends to recognise that our race has got a genius of its own. The Indian race is not inferior to any other race in recognising the real obligations of life, the sacredness of domestic ties and all the rest of it. I do not want my friends from a theoretical and academical stand-point to discourse on the virtues of monogamy, because in actual life my friend must have understood that, though monogamy is not enforced in practice, Indian opinion is monogamous in practice and the Nayar community is monogamous in practice. Then my friend Mr. G. Parameswaran Pillai asked? "If that were so, what is your objection to legislation." That is not the way in which the question should be approached. Where is the necessity for this legislation? I say then that I am for the retention of the existing Clause because it will be something in the nature of a safety valve when a man has to face a serious position.

Mr. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What about the women, Sir?

Rao Bahadur K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Well, the larger interests of the community as the whole will be the only justifying factor. We should not be in the land of dreams. What is it that we do? Do the women go about and earn their bread? The husband does his part of the duty and the woman does another part of the duty at home. The one is the complement to the other. With the two, life is perfect. I say, Sir, according to my conception of social legislation, this House will not be justified in enacting a law simply because no harm is likely to come out of it. Social legislation would be justified if its direct object was to get rid of an existing evil of a pronounced character and not merely to ward off a distant danger. Take the other side of the picture. If monogamy is enforced—compulsorily enforced—and if a man under exceptional circumstances finds that he has to choose another companion of life, my Christian friends and my enthusiastic Nayar friends in the persons of Mr. Govinda Menon and Mr. G. Parameswaran Pillai would tell us "divorce the wife" and that probably at a time when she stands in need of the greatest attention on the part of the husband,—when she may be insane or suffering from some incurable disease. The Hindus and Nayars who have been accustomed to the present state of law know the real difficulty. To the Christian gentlemen I would say that they should not do anything absolutely against the existing practice at present. It is no use indulging in the vain dream that human nature is such a

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magnificent thing, and that all human beings must be above temptations of life.

MR. A. HOOGEWERF (*Nominated*): May I know how it is that legislation was considered to be necessary for the prohibition of polyandry?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The query is absolutely irrelevant. We are now discussing the necessity for the statutory prohibition of polygamy. There is no use in arguing these questions of analogy. I understand that analogy in law is the most fallacious argument that one can think of. Let us not then be deflected from the real subject, namely, whether we have really found out any evil which would justify social legislation on the subject. As I submitted at the outset, this is an old, old institution in this land. No necessity has been made out to get rid of the evil. If we are to take the advice of our friends, I am sure, many, instead of marrying, and instead of desisting from such things, will somehow give vent to their emotion by illegal union with other women who will unfortunately be called concubines and the children of such union will be stigmatised as bastards. On the other hand if you allow them to marry once again and legalise such union, I think that will certainly lead to the perfect happiness of all the parties of such union and the children will be regarded as legitimate and they can also inherit the property of their father. I want this Council to view this picture also and see whether after all Indian society, in spite of the fact that polygamy is not prohibited, is not a perfect society. The Hindu society does not stand in need of such a drastic change simply because there are dreamers who look up to the far off ideal and anxiously and sincerely believe that that ideal can be realised by this piece of legislation. As I submitted once before, the Penal Code is not quite enough to eradicate the evils, if any, in the Hindu society. Knowing that the practice in our society is monogamous, why do you compel us to accept that piece of legislation, thereby implying that the Hindu society and the Nayar society are so rotten as to justify that piece of legislation? Legislation more or less is an index of the contemporary state of society. Once you accept Mr. Hoogewerf's motion, it is almost a confession that the Hindu and Nayar society at present are so rotten that the only solution, the only salvation must come from our accepting the ideal which he has been preaching so eloquently, no doubt in all sincerity, though from his personal stand-point.

MR. A. HOOGEWERF (*Nominated*): If in practice Nairs are monogamous, why is it that Mr. Krishna Aiyangar says that it is a far off distant ideal which we aim at?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Probably, if my friend had correctly realised the significance of what I conceive to be the justifying reason for social legislation, my friend would not have put that question.

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MR. L.R. RAJA RAJA VARMA KOIL TAMPURAN (*Edavagai*): If as my friend says the society is perfect and that no legislation is necessary unless it is rotten, is there any necessity for clause (9) itself?

MR. G. PARAMEŞVARAN PILLAI (*Neyyattinkara*): That is my question also.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I think that was brought into effect a long while ago and it is rather unfair to call me to justify a measure that was legalised by this Council long before I got into it. I think my friends should address that question to some of those that were members of the Council that passed it.

MR. JOSEPH PANJIKARAN (*Shertallai*): I never thought that this question would be so controversial. Some of my friends who oppose this amendment—I mean the Hindu gentlemen—ask the Christian members in this House to vote on this motion not from any inclination of their own but placing their decision on what would be for the good of the Nayar community. I may tell my Nayar friends that the Christians in this House who take part in this piece of legislation try to bring into effect what they believe to be the best in the interests of the Nayar community as a whole.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I never suggested anything like that.

MR. JOSEPH PANJIKARAN (*Shertallai*): All of us are trying as far as possible to serve the Nayar community in the best possible manner. I think that since a personal appeal, as it were, was made to the Christian gentlemen in this House I would not be justified in voting on the question without expressing my reasons for the same. I support Mr. Hoogewerf not on account of the fact that monogamy is virtuous in itself—it may be virtuous in certain circumstances but polygamy may in itself be better in other circumstances than monogamy. Some religions may insist upon monogamy. Other religions permit polygamy and even polyandry. We are not, I think, in this respect concerned so much with the respective merits of the different systems of marriage. We are concerned only with the question whether, if polygamy is allowed to continue, it will be for the good of the Nayar community; that is the only question with which this House is at present concerned. It is only in that light that I enter into the discussion. Under the Nayar Regulation of 1088, polygamy could not have been a source of evil to the community. In the present piece of legislation the Nayars are making very many alterations in the law under which they have to live. First of all, they want individual partition. Then, we have accepted the amendment of Mr. Govinda Menon which has made divorce impossible. The present amendment advises us to accept the system of monogamy. My own opinion is that if the Nayar community is determined upon having individual partition and if the Nayars want their women to get out of the joint family house, they must, at the same time, in their own interests, provide for ample safeguards for the interests of

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the fair sex. The women in future will have to leave their family house and depend solely upon their husbands. If a husband has two wives we can very well imagine the relationship in which they can live together. Till now, they could freely effect a divorce without any difficulty. According to the present Bill divorce has been made very difficult in the community—I may say almost impossible.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to know whether divorce is not impossible in the Brahmin community.

MR. JOSEPH PANJIKARAN (*Shertallai*): So far as I understand, the Brahmin community does not allow divorce. Therefore when it has been made practically impossible for the women to get away from her husband, I think it is highly necessary that certain safeguards must be provided in the interests of the Nayar community.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to know whether the absence of a law of compulsory monogamy among the Mitakshara Hindus in any way prejudices the interests of those people.

MR. JOSEPH PANJIKARAN (*Shertallai*): I do not think that comparison is after all quite correct.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I never instituted any comparison. I am only asking his opinion whether in the absence of a compulsory monogamous law among the Mitakshara Hindus the women in that community are not having sufficient safeguards.

MR. JOSEPH PANJIKARAN (*Shertallai*): They may not have any safeguards so far as monogamy is concerned. That is no reason why we should not provide any safeguard in the case of the Nayar community.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I have a direct answer from Mr. Joseph Panjikaran with respect to Mr. T. K. Velu Pillai's question?

PRESIDENT: He is not compelled to answer.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): I rise to a point of order. What right has Mr. P. K. Narayana Pillai to ask Mr. Joseph Panjikaran to answer when the question was put by Mr. Velu Pillai?

PRESIDENT: You can object only if it is objectionable under the rules and standing orders. I do not think it is objectionable.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am entitled to question any member while he is speaking. I do not see any reason why Mr. Nidiry should interfere while I am questioning Mr. Joseph Panjikaran. I want to know whether Mr. Joseph Panjikaran is in a position to give any definite answer to Mr. Velu Pillai's question.

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PRESIDENT: His answer implies that he is not in a position to do that.

MR. JOSEPH PANJIKARAN (*Shertallai*): FIRST OF ALL My answer given to Mr. Velu Pillai is very definite and clear.

So I support the amendment moved by Mr. Hoogewerf. I do so not because monogamy is very virtuous and better than polygamy, but because I think that, under the altered circumstances in which a woman of the Nayar community will be put in future, in the interests of the Nayar community, Nayar gentlemen must be prepared to make some sacrifices. What would be the case of a woman whose husband, on account of incompatibility of temparament for instance takes another wife, but does not care to effect divorce. If the woman had been allowed the right of effecting a divorce by reason of the husband taking a second wife during the life-time of the first wife without effecting a divorce, the matter mould have been quite different. But the divorce law that we have enacted contains no such provision. On these grounds, I suport the amendment.

MR. T. KUMARA PILLAI (*Eraniel cum Vilavankod*): എനിക്കും ഈ സംഗതിയെപ്പറ്റി എന്തെങ്കിലും അഭിപ്രായം പറയാതിരിക്കാൻ നിവൃത്തിയില്ല. ഈ വിഷയത്തിൽ എനിക്കു മി. ഹ്യൂഗവർഫിന്റെ അഭിപ്രായത്തോടു യോജിക്കാൻ നിവൃത്തിയില്ലാതിരിക്കുന്നു. അദ്ദേഹം വളരെ നല്ല ഉദ്ദേശത്തോടു കൂടിയാണ് ഈ ഭേദഗതി കൊണ്ടുവന്നിട്ടുള്ളതു്. ആ ഉദ്ദേശത്തോടുകൂടിതന്നെയാണു് മി: എ. ജി. മേനവൻ അതിനെ ബലമായി പിൻതാങ്ങി പറഞ്ഞതും. തറവാട്ടുകളിൽ നിന്നും ആഭരണങ്ങൾകൊടുത്തു സ്ത്രീകളെ പിരിച്ചയയ്ക്കുന്ന കാലത്ത് അവരുടെ രക്ഷ ഭർത്താവിലാണു സ്ഥിതിചെയ്യുന്നതു്. ആ നിലയിൽ ഏകഭാര്യാവ്രതം അനുഷ്ഠിച്ചില്ലെങ്കിൽ അവർക്കു രക്ഷയില്ലാതെ വരുമെന്നുള്ള വാദത്തിനു വേണ്ട പോലെ ശക്തിയുണ്ടെന്നു ഞാൻ സമ്മതിക്കുന്നു. എന്നാൽ ഏകഭാര്യാവ്രതത്തിലുള്ള ഗുണദോഷങ്ങളെപ്പറ്റി ചിന്തിക്കുന്നതായാൽ രണ്ടുഭാഗത്തും ധാരാളം ന്യായങ്ങൾ പറയാവുന്നതാണു്. ഇന്നത്തെ സ്ഥിതിയിൽ നായർ സമുദായത്തിനു് ഏകഭാര്യാ വ്രതം സ്വീകരിക്കേണ്ട അത്യാവശ്യം ഉണ്ടോ എന്നാണ് നോക്കേണ്ടതു. ഫാമിലി-ൽ നായർ റെഗുലേഷൻ ഉണ്ടാകുന്നതിനു മുമ്പിൽ ബോധിച്ച മാതിരി ഭാര്യയെ ഉപേക്ഷിക്കാമെന്നും എത്ര ഭാര്യമാരേയും വച്ചുകൊണ്ടിരിക്കാമെന്നും നടപടി ഉണ്ടായിരുന്നു. എന്നിട്ടും അക്കാലത്തും ബോധിച്ചമാതിരി ഭാര്യയെ ഉപേക്ഷിക്കയെന്നും ഏകകാലത്തു ഒന്നിൽ കൂടുതൽ ഭാര്യമാരെ വച്ചുകൊണ്ടിരിക്കയെന്നും ഉള്ള ഏർപ്പാടു വളരെ വളരെ അപൂർവ്വമായിട്ടേ ഉണ്ടായിരുന്നുള്ളൂ. ആ കാലത്തു തന്നെ ഒന്നിൽ കൂടുതൽ ഭാര്യമാരെ സ്വീകരിച്ചിട്ടുള്ള

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[Mr. T. Kumara Pillai.]

ദൃഷ്ടാന്തങ്ങൾ എടുക്കുന്ന പക്ഷം അവ പലേ സംഗതികളിലും അത്യാവശ്യങ്ങളാൽ വന്നുപോയിട്ടുള്ളതാണെന്നു കാണാവുന്നതാണ്.

ഫാമവ്വൽ നായർ റഗുലേഷൻ പാസ്സായതിൽ പിന്നീടു വിവാഹബന്ധത്തെ കൂടുതലായി ബലപ്പെടുത്തുകയും, പുരുഷന്മാരുടെ ചുമതലകളെ വർദ്ധിപ്പിക്കുകയുമാണ് ചെയ്തിട്ടുള്ളത്. ഈ കാരണങ്ങളാൽ ഭാര്യയെ ഉപേക്ഷിക്കുകയും ഏകകാലത്തു് ഒന്നിൽ കൂടുതൽ ഭാര്യമാരെ വച്ചു കൊണ്ടിരിക്കയും ചെയ്യുന്ന ഏർപ്പാടു വീണ്ടും വളരെ കുറഞ്ഞു വരികയാണ് ചെയ്തിട്ടുള്ളത്. നായന്മാരുടെ ഇന്നത്തെ സ്ഥിതി പലേ വ്യത്യസ്തങ്ങളായ കൂടിയാണ് നിൽക്കുന്നതു. ജീവിതമത്സരത്തിലുള്ള വിഷമതകൾ ഓരോ ദിവസവും വർദ്ധിച്ചു വരുന്നു. അതിലേക്ക് ഏറ്റവും യോജിപ്പായി തൊഴിലില്ലാത്തവരുടെ സംഖ്യ ഓരോ ദിവസവും അപരിമിതമായി വർദ്ധിച്ചുവരുന്നു. ഇതിനു പുറമെ ഇപ്പോൾ നിയമസഭയുടെ പര്യാലോചനയിലിരിക്കുന്ന ബില്ലിൽ അന്തർഭവിച്ചിട്ടുള്ള തത്വങ്ങളാൽ ഓരോരുത്തരും അവരവരുടെ സ്വന്തം കാലുകളിൽ നിന്നുകൊള്ളണമെന്നാണ് നിശ്ചയിച്ചിട്ടുള്ളതു്. ഈ സ്ഥിതിയിൽ ഒരാൾ വിവാഹം ചെയ്യാൻ ആലോചിക്കുമ്പോൾ ആ ഭാരം വഹിക്കാൻ തന്നാൽ ശക്തിയുണ്ടോ എന്നു് വേണ്ടപോലെ നിശ്ചയം വരുത്തിയതിൽ പിന്നീടു് മാത്രമേ അതിലേയ്ക്കു പുറപ്പെടാൻ നിവൃത്തിയുള്ളൂ. വിവാഹം ചെയ്തുപോയാൽ ആ ഭാര്യയെ ഉപേക്ഷിക്കുന്നതായാൽ തക്കതായ പ്രായശ്ചിത്തം കൊടുക്കണമെന്നു് ഇപ്പോൾ നിയമത്താൽ നിർബന്ധിക്കയും ചെയ്തിട്ടുണ്ടു്. ഈ സംഗതികളും നിയമനിഷ്കർഷകളും ഒന്നിച്ചു കൂട്ടിച്ചേർത്തു് നോക്കുമ്പോൾ ഒരാൾക്കു് ഒന്നിൽ കൂടുതലായി ഭാര്യമാരെ വച്ചുകൊണ്ടിരിക്കുവാൻ സാധിക്കാതെ വരുന്നതാണു്. ഇങ്ങനെയിരിക്കെ അസാധാരണസംഗതികളിൽ ഉപയോഗിക്കാൻ ഉപകരിയ്ക്കുന്നതായ ഒരു അവകാശത്തെ കളയേണ്ട അവശ്യമുണ്ടെന്നു തോന്നുന്നില്ല.

ഈ അവസരത്തിൽ മറെറാരു സംഗതികൂടി പറയുന്നുള്ളൂ. കൌൺസിലിൽ ഹാജരാക്കിയതായ നായർ ബില്ലിനെ പററി പര്യാലോചിച്ചു് റിപ്പോർട്ടു ചെയ്യാനേൽപ്പിച്ചതു് ഫ എ അംഗങ്ങൾ അടങ്ങിയതായ ഒരു സെലക്ട് കമ്മററിയേയാണു. ഒരു സമുദായത്തിലെ പലേ അഭിപ്രായവ്യത്യാസങ്ങളും ആ മാതിരി ഒരു ബില്ലിൽ ഉൾപ്പെടുത്തുവാൻ ഒരിക്കലും സാധിക്കുന്നതല്ല. സാമുദായികനിയമങ്ങളിൽ ഓരോ പക്ഷക്കാരും മറു പക്ഷക്കാരുടെ അഭിപ്രായങ്ങളെ ബഹുമാനിച്ചു് അങ്ങോട്ടും ഇങ്ങോട്ടും രാജിപ്പെടേണ്ടതായി വരുന്നതാണു്. സെലക്ററ് കമ്മി

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റിയിൽ അങ്ങനെയാണ് ചെയ്തിട്ടുള്ളതു. അതിന്റെ ഫലമായി ശു പീകരിച്ചിട്ടുള്ള ബില്ലാണ് ഇപ്പോൾ നിയമസഭയുടെ മുമ്പാകെ പ യ്യാലോചനയിലിരിക്കുന്നതു്. അങ്ങനെ വന്നിട്ടുള്ള ബില്ലിൽ മുമ്പ് ഓ രോരുത്തക്കും ഉണ്ടായിരുന്നതും സെലക്ററു കമ്മറിയിൽ വച്ച് വേ ണ്ടപോലെ പയ്യാലോചിച്ചിട്ടുള്ളതുമായ സംഗതികളെ വീണ്ടും കൌൺ സിലിന്റെ പയ്യാലോചനയ്ക്കു കൊണ്ടുവരുന്നതായാൽ എല്ലാവരുടേയും എല്ലാ അഭിപ്രായവ്യത്യാസങ്ങളേയും ചിന്തിക്കേണ്ടതായി വരുന്നതാണ്. അതിനിടയാകുന്നപക്ഷം പലേ അവകടങ്ങളും വന്നേക്കാവുന്നതാണ്. ഇതുകൊണ്ടു ബില്ലിൽ പ്രധാനമായ അഭിപ്രായവ്യത്യാസങ്ങളേയോ ഭേദഗതികളേയോ കൊണ്ടുവരുന്നതിൽ ഞാൻ ആക്ഷേപിക്കുന്നില്ല. ഈ ബിൽ വേണ്ടപോലെ പയ്യാലോചിച്ച് ഈ കൌൺസിലിൽ തന്നെ പാസ്സാക്കണമെന്നുള്ള നായന്മാരുടെ ന്യായമായ ആഗ്രഹം സാധി ക്കുന്നതിൽ പ്രതിബന്ധം വരാൻ പാടില്ലെന്നു മാത്രമെ ഞാൻ പറ യുന്നുള്ളൂ. ഏകഭാര്യാവ്രതത്തെ സ്വീകരിക്കുന്ന സംഗതിയിൽ ബലമാ യ ഒരു വിപരീതകക്ഷിയുള്ളതാണ്. അവരുടെ അഭിപ്രായങ്ങളെ ബ ഹുമാനിക്കാതെ തരമില്ല. ഒരാൾ ഒരു സ്ത്രീയെ സംബന്ധം ചെയ്ത് നാലഞ്ചു കുട്ടികൾ ഉണ്ടാകുന്നു. അതിൽപിന്നിട്ട് ആ സ്ത്രീയ്ക്കു ഭ്രാന്തോ തീരാത്ത സുഖക്കേടോ ഉണ്ടാകുന്നു എന്നിരിക്കട്ടെ. അങ്ങനെ വരുന്ന സം ഗതികളിൽ ആ ഭാര്യയുടേയും കുട്ടികളുടേയും പേരിലുള്ള സ്നേഹബ ന്ധത്താൽ വേറെ വിവാഹം ചെയ്യാതെ ആ ഭാര്യയേയും കുട്ടികളേയും വേണ്ടപോലെ സംരക്ഷിച്ചുപോരുന്ന ദൃഷ്ടാന്തങ്ങൾ എനിക്കറിയാവുന്നതാ ണ്. അതുപോലെ തന്നെ അങ്ങനെ വരുന്ന അവസരങ്ങളിൽ ഭാര്യയുടെ പേരിലുള്ള സ്നേഹത്താൽ അവരെ ഉപേക്ഷിക്കാൻ സമ്മതമില്ലാതെ അ വരേയും അവരുടെ കുട്ടികളേയും അയാളേയും ശുശ്രൂഷിക്കുന്നതിന് വേ റെ വിവാഹം ചെയ്യുന്ന ദൃഷ്ടാന്തങ്ങളും ഞാൻ കണ്ടിട്ടുണ്ട്. ഏകഭാര്യാ വ്രതം നിയമത്താൽ നിഷ്കൃഷ്ടചെയ്യുന്ന പക്ഷം ഒരാൾ അതിയായി സ്നേ ഹിച്ചു വരുന്ന ഭാര്യയെ നിയമത്താൽ ഉപേക്ഷിച്ചുല്ലാതെ വേറെ വിവാ ഹം ചെയ്യാൻ പാടില്ലെന്നു വരുന്നതിൽ പലക്കും സങ്കടമുള്ളതാണ്. ആ ന്യായമായ വാദത്തെ കൌൺസിലിൽനിന്ന് ആദരിക്കയാണ് വേ ണ്ടതു്.

മറെറാരു സംഗതിക്കുടി ഈ അവസരത്തിൽ പറയാനുള്ളതു് നാ യർ റഗുലേഷൻ ഈ കൌൺസിലിൽനിന്നു പാസ്സാകുന്ന മാതിരി ത ന്നെ എല്ലാക്കാലവും ഇരിക്കണമെന്നു നിർബന്ധമുള്ളതല്ല. ഈ നി യമം നായന്മാരുടെ ഇടയിൽ എങ്ങനെ നടക്കുന്നുവെന്നുള്ള പരിശോ

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[Mr. A. Hoogewerf.]

ധനയിൽ ഏകഭാര്യാവ്രതം സ്ഥാപകരിക്കേണ്ടതാണെന്ന കാണുന്നപക്ഷം അപ്പോൾ അതിലേക്ക് നിയമസഭയിൽ ഒരു ഭേദഗതിപ്രമേയം കൊണ്ടുവരുന്നതാണ്. അതുകൊണ്ട് ഇപ്പോൾ ഞാൻ അദ്ദേഹത്തിന്റെ അഭിപ്രായത്തെ ബലമായി എതിർക്കുന്നു.

MR. A. HOOGEWERF (*Nominated*): Sir, before I go into the matter under discussion I have a personal explanation to make. Some of my friends here may think in their heart of hearts that I am poking my nose into a legislation that does not concern me. Mr. Krishna Aiyangar in a way insinuated that I am a Christian and I can view the matter only from the Christian point of view.

PRESIDENT: There is no insinuation.

MR. A. HOOGEWERF (*Nominated*): At any rate he said that I am a Christian and I would have my Christian angle of vision.

PRESIDENT: That is a fact, you are a Christian.

MR. A. HOOGEWERF (*Nominated*): I stand here, Sir, as I said, as a member of this Council and not merely as a Christian. I am for the purpose of this debate a member of this Council just like anybody else. If I have no voice in this matter, I think Mr. Krishna Aiyangar, who is a Brahmin, has also no voice in this matter.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I think I must make a personal explanation. I never said so. As a matter of fact, we have all been listening very attentively to his powerful voice.

MR. A. HOOGEWERF (*Nominated*): It was at the request of some of my leading Nayar friends that I made up my mind to speak on this subject. I am born in a Nayar country; I am proud to have served under Nayar officials two of whom are seated in the visitors' gallery on my left. I have, as my best friends, Nayars, including the mover of the bill, whom I look upon as a true patriot. My family has been serving this State for four generations and had something to do with its making. In fact I am practically a Nayar in sympathies. The Nayars are probably the cleanest people in the world. I only want that their legislation should have no taint but be clean as themselves. Now, Sir, I thought that my statements would fall upon deaf years. But from a perusal of the agenda paper I find that half the number of Nayar members have been sending up similar amendments. This is a great strength to me. If monogamy is the practice I cannot see why we should not have legislation sanctioning it. The Ezhavas accepted monogamy not because polygamy was rampant but because the intelligentsia of the community wanted it. The Nayar Congress, whose resolutions are made so much of, has declared openly at Vaikam, where thousands of Nayars

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were gathered, that they wanted monogamy. I think that is a very great and weighty pronouncement. We make so much of the other resolutions. Why not then give this also its due weight? The objection as far as I can gather from the speeches of my Nayar friends is that the community is not prepared to accept monogamy. This was the cry when the questions of divorce and conversion were discussed in this House. But this Council in spite of it accepted the amendment. There was a regular flutter in the dove-ctes when it was passed and it was said that the bottom was knocked out of the Nayar Regulation. But from yesterday's and to-day's discussion here we find the bottom is still there. The angle of vision is gradually changing with regard to divorce which was so much talked of. In regard to monogamy, the sense of the community was not ascertained by a roving commission. Custom seems decidedly to be in favour of it. Cochin has accepted it, and they are our brothers and neighbours. Why should we then go to Africa or Persia or China for analogy? All the advanced nations are monogamists. Even independent of the sense of the community, as the elected members here are the leaders of the intelligentsia and of the community, they should not only reflect the views of the people but also often lead them. Custom is changing every day, and when we are not quite sure what exactly is the sense of a community on a certain question, we have to do what is right and proper. If legislation has to follow custom it shall be quite in the fitness of things if we follow it and legislate according to the present custom.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : I would like to ask Mr. Hoogewerf which he would favour more—compulsory monogamy or absolute prohibition of divorce.

MR. A. HOOGEWERF (*Nominated*) : I do not hear.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : I would like to know which one of these Mr. Hoogewerf would favour—compulsory monogamy or absolute prohibition of divorce.

MR. A. HOOGEWERF (*Nominated*) : He knows my views on this matter. I stoutly oppose divorce and I approve monogamy. There are good customs and bad customs and it should be the duty of the leaders to choose between the two. I plead for the wife and children. These are some of the reasons that I have to put forward and I ask my friends with a clean and unbiassed mind to forget for the time being that am a Christian and to vote on this important question which deeply concerns the welfare of the community.

The motion that, in line 1, after the word 'female' the words *'or a male'* be added was put to the vote and carried, 19 voting *for* and 14 *against*.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*) : I ask for a poll.

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[Mr. T. K. Velu Pillai.]

A poll was taken with the following result :

AYES.—19.

1. Mr. A. J. Van Rose.
2. ,, I. C. Chacko.
3. ,, R. Dhamkoti Pillai.
4. ,, K George.
5. ,, R. Krishna Pillai.
6. ,, M. Udaya Varma Raja.
7. ,, J. John Nidiry.
8. ,, P. T. Thomas.
9. ,, K. Dominic Tomman.
10. Mr. Joseph Panjikaran.
11. ,, C. Sankara Menon.
12. ,, G. Parameswaran Pillai.
13. ,, Tariatu Kunjitomman.
14. ,, V. Kunjakrishna Pillai
15. ,, L. R. Raja Raja Varma Koil Tampuran.
16. ,, M. K. Khadir Pillai.
17. ,, A. Hoogewerf.
18. ,, A. Govinda Menon.
19. Mr. T. M. Chidambaratanu Pillai.

NOES.—14.

1. Mr. K. Parameswaran Pillai. (*Ag. Director of Agriculture and Fisheries*).
2. ,, R. K. Krishna Pillai.
3. ,, S. Parameswara Aiyar.
4. ,, V. Subba Aiyar.
5. Rao Bahadur K. A. Krishna Aiyangar.
6. Mr. T. K. Velu Pillai.
7. Mr. M. N. Pillai.
8. ,, P. K. Narayana Pillai.
9. ,, T. Kumara Pillai.
10. ,, N. Padmanabha Pillai.
11. ,, N. Ramakrishna Pillai.
12. ,, K. Parameswaran Pillai. (*Tiruvalla.*)
13. ,, T. Lakshmana Pillai.
14. ,, C. P. Kochukunju Pillai.

The motion was declared carried.

MR. M. K. KHADIR PILLAI (*Nominated*) : Are there any neutrals ?

PRESIDENT : I will count the neutrals also.

NEUTRALS.—6.

1. Mr. J. Stephenson.
2. ,, M. Raja Raja Varma.
3. ,, S. T. Ponnuswami Pillai.
4. Mr. M. R. Madhava Variar.
5. ,, N. Kumaran.
6. ,, P. Parameswaran.

The House rose at 6-6 P. M.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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